



# The Role and Effectiveness of Regulation of Dog Breeding in Australia

by

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Submitted in fulfilment of the requirements for the Doctor of Philosophy

University of Tasmania December 2017

## Declaration of Originality

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Simone Anita Blackman

December 2017

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## Acknowledgements

There are many people that have made this thesis possible. I did not believe that I could even start, let alone complete one.

To my immediate family - David Bingham and our children Sancia, Ashby and Essien, I extend huge amounts of love and gratitude. Thank you for giving me the opportunity to start and complete this thesis. David, thanks for being the best Dad my kids could ever ask for and for allowing me the time I have needed to sit in my office and work, knowing that the kids were loved, fed, clean and transported as needed.

To my family. My parents, Dr Adrian Blackman and Barbara Blackman, thank you for being wonderful people who have always supported me, and increasingly over the last six years as things in my life have changed. You offered nothing but love, well financial support and love. Mum – thank you for instilling in me and my family a great love for animals, especially dogs. My siblings, Luke who we lost in October 2015, Dr Konrad Blackman and my twin sister Monique Blackman. Each of you have provided me with support in your own ways. Luke's death, a body blow to all of us, allowed me to focus on what really matters and gave me the determination to finish. Monique – your calm presence and mantra – *'suck it up and be positive'* has supported me more than you will know. To my father in law, Sir Max Bingham and my sister in laws – Belinda Webster and Dr Sharon Bingham, thank you. The help with proof reading and friendship you have provided me has overwhelmed me, best father in law and sister in laws I could ever have hoped for. To Margaret Marstand, my aunt, first (and best boss) and mentor – thank for being the lady you are.

To my colleagues, who are of course my friends, thank you so much, you have all listened to me, offered help and support. Dr Debra Wills, Patricia O'Keefe, David Kronenberg, Dr Louise Grimmer, Stuart Schonell, Associate Professor Trevor Wilmshurst, Dr Paul Shantapriyan, Professor Martin Grimmer, Dr Tommy Wong, Simon Duigan, Dr Robert Hecker and Dr Simon Fishwick. To the most amazing work horse I have ever met – Dr Stuart Crispin, having you in the next office has been a blessing. Despite you taking on the work of nearly half of the Tasmanian School of Business and Economics you have always been there to help, pop in and check on progress and offer encouragement. To Dr Megan Woods, the help you provided to me, firstly as a colleague and later as a friend, with assistance with NVivo and emotional support has been amazing. To Dr Kim Backhouse, our friendship as it has developed over the last few years has been invaluable. Your calm ways, willingness to listen and give advice as needed has been appreciated.

To my best friends - Sue Chalmers, Niral Shah, Deanna Bombardieri and Kerri Jenkins – I owe much. Sue, your belief in me and my abilities, often left me amazed. Your bubbly phone calls, messages of support and silly ways have inspired me and continue to do so. Niral, you have been there as a calming influence for so many years, thank you the many phone calls when I haven't quite known how things might pan out. Deanna, you have loved me unconditionally and honestly when you have seen strength in me that only you have seen. Kerri, thanks for being so accepting of me and all my change.

To my research assistants - Aaron Moss and Mark Tocock thank you for the guidance and help you both provided. Thanks Aaron in assisting with the legal chronology and Mark for the help getting this quantitative data novice to at least embrace some basic concepts.

To the amazing academics I have met during this thesis journey. Thank you to Professors Paul McGreevy and Christine Parker, experts in their respective fields and wonderful people that I met early on during this PhD journey. As a fan meeting authors of work that I had admired for some time, I was a little star struck. Thank you both for the help and friendship.

Thanks to those in the dog world that have supported me, both emotionally and with chats on dog breeding. I have friends that I have met through my love of dogs and dog breeding from all over the world. Those that have become great friends, thank you. Kristi Crouch, Denise Milko, Michael Muldoon, Kylie Wilson, Geoff Blythe and Syd Munton – always there as an uncle figure and stalwart in the Tasmanian dog community. Di Wazny, a friend and partner in my own breeding, thank you for everything.

To my supervisors, past and current – I cannot thank you enough. Lyndon Griggs, thanks for believing in me enough to agree to supervise me, thanks for the help over the first 18 months of my journey. To the late Associate Professor Sue Hrasky, I owe a lot. I thank her for her support and guidance. To my current supervisors, Dr Sonia Shimeld and Professor Di Nicol, I do not know what to say to you both but thank you. I have been so lucky to have had guiding me woman of your calibre and intelligence. You have kept me focused and gently supported me as needed.

To the amazing Dr Alistair Reed. Not sure where to start with thanking you. It was meeting you and those few chats that were triggers that gave me the self-belief to tackle a PhD. Over the last year you have been a rock. I know I have not been the easiest person to be around for so many reasons. You have taken my troubled ways in your stride, thank you. That you were able to share your own PhD journey and make me believe in mine has allowed me to finish and allowed me to realise the future is an exciting one.

Simone Blackman, December 2017

## Abstract

Despite the importance that a growing number of dog owners place on choosing a genetically, temperamentally and physically sound, long-lived and suitable companion animal, dog breeding in Australia is not thought of as an animal industry. On the contrary, most pure breed dogs are bred by owners who consider themselves to be hobby breeders. These breeders are actively discouraged from breeding their dogs commercially by the Australian National Kennel Club Ltd (ANKC) and the State and Territory canine associations that oversee the breeding of registered pure breed dogs.

Many stakeholders are opposed to the commercial breeding of all dogs, equating 'commercial' with 'puppy farming', something that continues to receive negative media and political attention. However, the concerns that are expressed in both the academic and popular literature about dog breeding extend beyond these commercial practices. It is known that some pure breed dogs are particularly prone to genetic and health issues. For some breeds, this manifests in traits that are seen to make them less suitable as companion animals.

State-based codes that attempt to regulate dog breeding by mandating standards of minimum best practice currently exist only in New South Wales and Victoria. There are also industry breeding codes aimed at regulating breeders within the pure breed framework. Yet breeding of dogs in compliance with these regulatory instruments accounts for less than twenty percent of all puppies born each year in Australia. The ANKC and State and Territory canine associations currently play limited supervisory roles in regulating the breeding practices of their members.

Through a case law analysis, a literature review and collection of data on stakeholder perceptions, this research identifies the major issues that stakeholders believe exist in dog breeding and considers the role regulation has in addressing them. It establishes that the stakeholders are concerned about the lack of an overarching effective regulatory framework, with both State and industry codes being poorly enforced and monitored, creating minimal breeder accountability for breeding practices or for the health and welfare of the dogs that they produce. The current framework also fails to address information asymmetry, with no mandatory disclosures around genetic testing or information on how puppies are being produced.

This research considers the effectiveness of existing regulation (in particular codes of practice) and regulatory actors. It considers what role regulation may play into the future with the adoption of some regulatory and non-regulatory changes. It considers an expanding role for the ANKC Ltd.

Scholarship that proposes ways that regulation can address the issues in dog breeding has high social relevance. This research confirms the need to embrace aspects of self-regulation and its role in making all breeders more accountable for the welfare of their breeding dogs and the quality of the puppies they produce.

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## Glossary

Term	Definition
<b>Accountable</b>	A feeling of responsibility to and for others for one's own actions.
<b>Animal Law</b>	Statutory and court made law that directly affects animal welfare and indirectly affects animals by empowering humans to make decisions around their ownership and management.
<b>Animal Welfare</b>	The physical and mental wellbeing of an animal.
<b>Backyard Breeder</b>	Those that breed without accountability in an unregulated environment.
<b>Companion Animals</b>	Domestic animals which are referred to as 'pets' including cats, dogs, hamsters, rats, ornamental fish and caged birds.
<b>Dog Regulation</b>	All laws, rules and regulations set down by the various regulatory authorities that have any power to regulate dogs, their ownership, management, welfare and care generally.
<b>Puppy Farm</b>	An intensive dog breeding facility that operates under inadequate conditions and fails to meet the dogs' behavioural, social and/or physical needs.
<b>Pure Breed</b>	A dog that belongs to a certain canine breed, separated by physical appearance and behavioural traits which are reflected in official and recognised breed standards established by breed societies and kennel clubs. Being able to be registered and receive a pedigree, to outline its ancestry by the applicable canine or kennel club in its home country.
<b>Regulation</b>	Sustained and focused attempt to change and guide the behaviour and conduct of others according to standards or goals with the intention of producing broadly identifiable outcomes, which may involve mechanisms or standard-setting, information-gathering and behaviour-modification.
<b>Regulatory</b>	
<b>Accountability</b>	The relationship between power holders and those affected by their actions (participants). It has 2 key elements, the first being answerability, being liable to reveal, explain and justify what one does. The second is enforceability, allowing participants to judge and punish poor performance.
<b>Stakeholder</b>	Any person or body that has a stake or interest in dog breeding.
<b>Temperament</b>	Inherited, early appearing tendencies that continue throughout the life and serve as the foundation of personality.

## CHAPTER 1: INTRODUCTION

### PART I. THESIS OVERVIEW

#### 1. Introduction

This thesis examines the role and effectiveness of regulation of dog breeding in Australia, with a focus on the perceptions of the various stakeholder groups in dog breeding on the issues and the role of breeding codes in protecting dogs and dog owners. This research evaluates the regulation, as defined in the glossary, in terms of its effectiveness in improving outcomes for dogs, dog buyers, dog breeders and those who share a passion and a love of dogs and the many varied roles that dogs play in Australia. Finally, it explores possible regulatory solutions to address the issues in breeding, by drawing on current regulatory theory and regulatory research.

Dogs are subject to a substantial regulatory framework.<sup>1</sup> Despite this framework, there are still significant issues that impact on dog welfare and the rights of companion dog owners that remain unregulated. This research focuses on the welfare of breeding dogs and the welfare and quality of puppies produced by the various groups that breed dogs in Australia. The issues that exist in dog breeding in Australia are identified through a literature review, an examination of the current regulatory framework and an Australian case law analysis.

The research contains an empirical component that involves the systematic use of both qualitative and quantitative data collection methods. This data captures the views of the stakeholders in dog breeding on the issues identified in the literature review and case law analysis and their views on the role that regulation plays and should play in addressing the issues and in improving outcomes for breeding dogs and dog owners. This research uses a framework for evaluating effectiveness of regulation and the regulatory actors developed within the discipline of regulatory theory. Having considered the regulatory issues, this research develops a framework for changes that might be made into the future.

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<sup>1</sup> Dogs in this thesis refer to the species *Canis lupus familiaris*. This thesis does not consider the role of Dingoes, *Canis lupus dingo* in Australia.

## 2. Theoretical Overview

The fields of animal welfare and animal law are wide, with many interlocking research disciplines that expose and consider the current issues that are faced by animals and the way that the law and regulation can protect them. Much of the existing research explores and suggests ways to improve the lives of animals and has a focus on how humans and animals interact.<sup>2</sup> Eadie and others recognises four common methods of improving outcomes for animals: the creation and enforcement of effective legislation and regulation; improving education and training; increasing scientific research; and improving animal husbandry.<sup>3</sup> This research considers the first of these and uses responsive regulatory theory, developed by a network of regulatory theory academics including; Ayres, Braithwaite and Parker.<sup>4</sup> Regulatory theory recognises that regulation pervades society, and if used constructively, it can assist in addressing issues.<sup>5</sup> This theory provides the theoretical framework to examine the issues that exist in dog breeding in Australia.

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<sup>2</sup> Mike Radford, *Animal Welfare Law in Britain: Regulation and Responsiveness* (Oxford University Press 2001), ix.

<sup>3</sup> Edward Eadie, *Education for Animal Welfare* (Springer, 2011), 2.

<sup>4</sup> Ian Ayres and John Braithwaite, *Responsive Regulation - Transcending the Deregulation Debate* (Oxford University Press, 1992), John Braithwaite, 'Accountability and Governance Under the New Regulatory State' (1999) 58 *Australian Journal of Public Administration* 90, John Braithwaite, 'Rewards and Regulation' (2002) 29(1) *Journal of Law and Society* 12, John Braithwaite, 'Responsive Regulation and Developing Economies' (2006) 34(5) *World Development* 884, Colin Scott, 'Spontaneous Accountability' (2006) Dowdle, M. (ed.). *Public Accountability: Designs, Dilemmas and Experiences* 1, John Braithwaite, 'The Essence of Responsive Regulation. (Fasken Lecture)' (2011) 44(3) *University of British Columbia Law Review* 475, Colin Scott, 'Accountability in the Regulatory Space' (2000) 27(1) *Journal of Law and Society* 38, Christine Parker et al, *Regulating Law* (Oxford University Press, 2004) Colin Scott, 'Evaluating the Performance and Accountability of Regulators' (2013-2014) 37(2 - Winter) *Seattle University Law Review* 353, Christine Parker, *The Open Corporation* (Cambridge University Press, 2002), Christine Parker and Vibeke Lehmann Nielsen, 'Do Businesses Take Compliance Systems Seriously? An Empirical Study of the Implementation of Trade Practices Compliance Systems in Australia' (2006) 30(441-493) *Melbourne University Law Review*, Christine Parker and Vibeke Lehmann Nielsen, 'Corporate Compliance Systems Could They Make Any Difference?' (2009) 41(1) *Administration & Society* 3, Christine Parker and Vibeke Lehmann Nielsen, 'The Challenge of Empirical Research on Business Compliance in Regulatory Capitalism' (2009) 5(1) *Annual Review of Law and Social Science* 45 and Christine Parker, 'Twenty Years of Responsive Regulation: An Appreciation and Appraisal' (2013) 7 *Regulation and Governance* 1.

<sup>5</sup> Peter Drahos (ed), *Regulatory Theory Foundations and Applications* (ANU Press, 2017); *ibid*, xxxi.

### 3. Overview of the Current Regulatory Framework

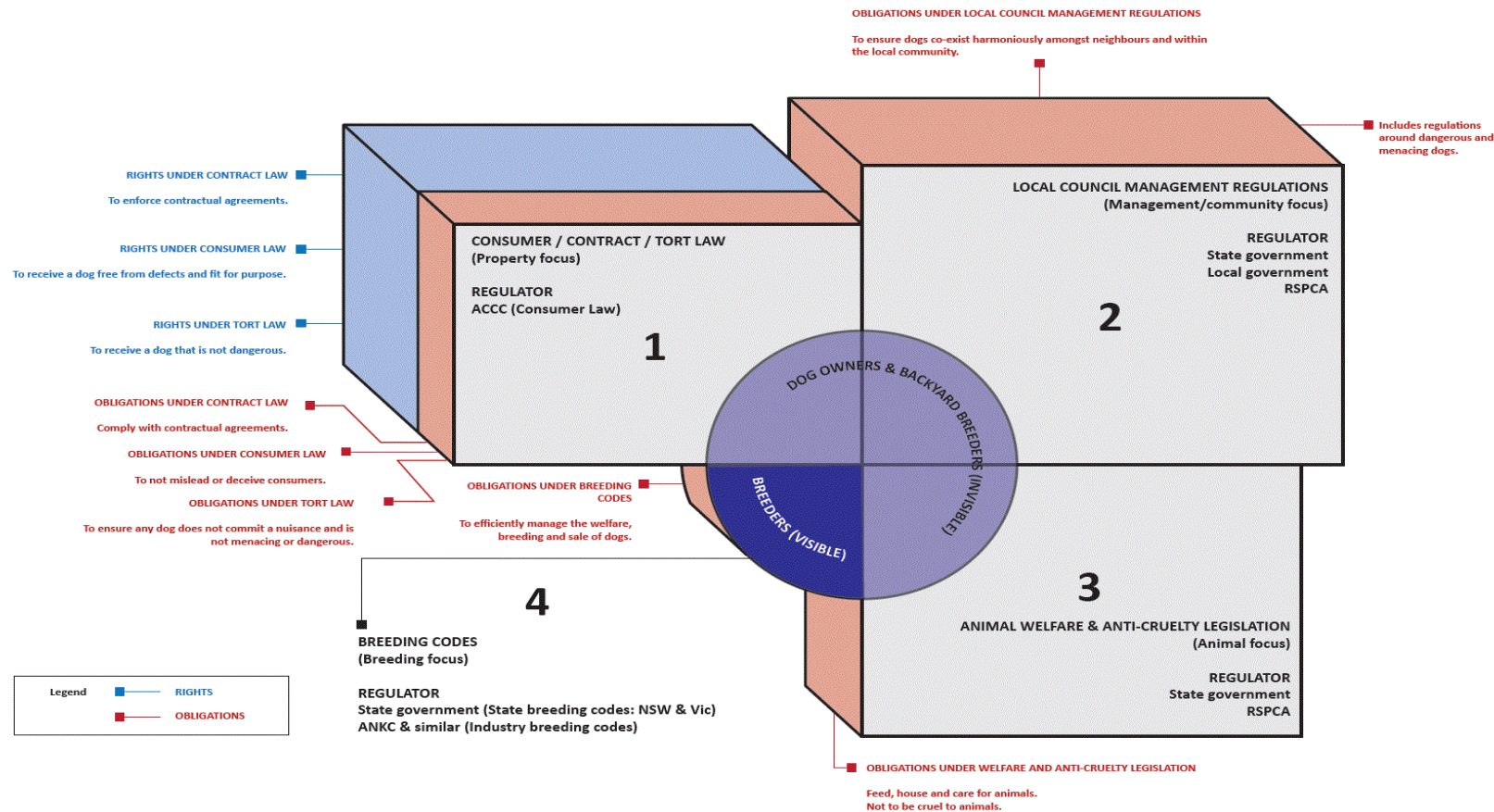


Figure 1 - Schematic Representation of the Current Regulatory Environment in Dog Breeding

Given the importance of animals in our lives it is not surprising that a substantial regulatory and legal framework exists affecting companion, agricultural and wild animals.<sup>6</sup> Animal law encompasses many different areas of law including: civil law; contract law; tort law; and of course those regulations that exist to ensure animals are appropriately cared for, controlled, managed and protected from cruelty. These laws and regulations are examined together in this research as the current regulatory framework.

The current regulatory framework in Australia that applies to breeding of companion animals is divided by this research into four components.<sup>7</sup> Figure 1, above, provides a schematic representation of these four components as they apply to dogs. The first component comprises the civil laws and consumer laws that provide rights for dog owners to assert ownership of their dog and to protect the value of their dog. These laws view dogs as a 'good' or 'property' and in Australia there are many different types/breeds of this 'good' available. There are approximately 206 pure breed types recognised in Australia and, of course, there are always many cross breed and mixed breeds available.<sup>8</sup> The second component, which also sees dogs as property, comprises those laws and regulations that call for dogs to be properly controlled and managed to prevent them causing damage, and that obligate owners to ensure their dogs do not become a nuisance. The third component comprises regulation that addresses the welfare and rights of individual companion animals. There is legislation in place in each State and Territory that attempts to prevent animal cruelty and enhance animal welfare. This legislation has developed over time, coming from a basic desire by Parliament to stop animal cruelty. This component

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<sup>6</sup> Elizabeth Ann Overcash, 'Unwarranted Discrepancies in the Advancement of Animal Law: the Growing Disparity in Protection between Companion Animals and Agricultural Animals' (2012) 90(3) *North Carolina Law Review* .

<sup>7</sup> Figure 1 above provides a schematic representation of the current regulatory environment in Australia. This representation is not perfect but allows an examination of the legal framework as it applies to companion animals. It also facilitates the discussion on the themes that run through the regulatory framework. It is further acknowledged that the rationale for regulation in these 4 areas are somewhat different. The first component attempts to protect private interests, the second and third can be broadly categorised as regulation that attempts to protect public interests and the fourth component is regulation that is institutional in the sense that it attempts to regulate an institution and relationships within the industry or hobby of dog breeding and dog activities. Robert Baldwin and Martin Cave, *Understanding Regulation: Theory, Strategy and Practice* (Oxford University Press 1999), 33.

<sup>8</sup> Australian National Kennel Council Limited, *Breeds* (2012) <<http://www.ankc.org.au/Breeds.aspx>>.

continues to evolve as societal values shift, with many in the western world viewing their companion animals as members of the family rather than property. The fourth component comprises those regulations that regulate breeding and selling of dogs (including the various regulations, guidelines, standards and codes that operate at both State/Territory and industry level).

At an industry/ breeder level there are national and State codes and breed standards that guide registered pure breed dog breeders in their breeding of the different breeds that exist.<sup>9</sup> These industry codes also regulate how member breeders conduct themselves when participating in dog events such as dog showing, dog agility, dog tracking and obedience. Each State and Territory code also provides regulation around how these registered pure breed dog breeders may sell their dogs.

## PART II. RESEARCH QUESTION AND AIMS

The examination of the literature set out in Chapters 2 to 4, and the case law analysis considered in Chapter 3 draw out the following overarching research question:

*What is the role and effectiveness of regulation in dog breeding in Australia?*

The analysis of this research question is divided into four components, underpinned by doctrinal and theoretical analysis of the current regulation of dog breeding in Australia. The four components are:

- 1. What are the major issues facing dog breeding in Australia, as perceived by key stakeholders, and how do those stakeholders believe these issues can be addressed?*
- 2. What are stakeholder perceptions of the role of regulation in dog breeding?*
- 3. How effective is the current regulatory environment in ensuring appropriate canine welfare and outcomes for consumers?*
- 4. What are the drivers for consumers and breeders in dog breeding?*

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<sup>9</sup> ANKC Ltd Breed Standards, for example the standard for the Australian Cattle Dog [http://www.ankc.org.au/Breed\\_Details.aspx?bid=132](http://www.ankc.org.au/Breed_Details.aspx?bid=132).

The thesis ends with an analysis of how the regulatory environment should be changed to ensure canine welfare and appropriate outcomes for consumers, taking into account doctrinal, theoretical and empirical analysis.

The aims of this research are:

- To identify the current regulatory and legal issues, health issues and stakeholder issues in dog breeding in Australia that impact on dog welfare and on the rights of companion dog owners;
- To investigate the perceptions of the various stakeholders on the issues;
- To consider the role and effectiveness of regulation in addressing the issues, in particular the effectiveness of codes in improving the welfare of breeding dogs and outcomes for consumers; and
- To consider changes that might be made to the regulatory framework and in terms of breeding practices that will enhance sustainable dog breeding practices in Australia.

These aims assist to address the overarching research question and its 4 components. The issues in dog breeding have been identified through a consideration of the literature that critiques both the issues in dog breeding and the deficiencies that exist within the current regulatory framework. The current roles that regulation plays in dog breeding and the way that the regulatory framework might be changed to better address the issues in dog breeding is examined through stakeholder interviews, surveys and an examination of archival industry documentation. Stakeholders provide their perceptions about the current industry and regulatory framework and their thoughts on what changes are needed to more appropriately address canine welfare and consumer protection, in both hobby and commercial dog breeding. This research uses regulatory theory to inform and develop recommendations about the existing regulatory framework, and about processes and techniques that can be put in place to improve outcomes for dogs and dog buyers in Australia.

### PART III. RESEARCH SCOPE

The scope of this research proposal is not to revisit the success or otherwise of the array of regulatory techniques used in attempts to reduce animal cruelty and increase animal welfare for dogs. Rather, it is to look at the role of regulation in: ensuring appropriate breeding practices; appropriate canine genetic and behavioural health of breeding dogs and puppies sold by hobby



breeders and breeding establishments. This examination measures the effectiveness of this regulation by assessing stakeholder views on the ability of the regulation to ensure the long-term viability of pure breed dog breeding in Australia; enhance dog welfare and provide adequate rights to dog buyers. The objectives of existing breeding codes are examined and compared to stakeholder's views on the role of these codes. The proposals for change that are made by this research seek to improve the breeding and selling practices of both hobby pure breed breeders and breeding establishments.

This research references animal literature where relevant but does not intend to contribute or engage with the primary debates and concepts in the animal law or animal welfare literature. It is informed by the developing body of literature on animal regulation, dog ownership, dog management and dog welfare. The examination of various stakeholder perspectives of the issues and how they are to be addressed yield valuable insights that will contribute to the animal breeding literature.

Everyone that breeds a litter of puppies in Australia cannot be regulated. The scope of this research is limited to the regulation of breeders that are members of a breeding industry or those that are recognised under applicable State or Territory legislation as registered breeders or owners of breeding establishments. This thesis achieves this by focusing on the effectiveness of codes and the ANKC as an industry regulatory actor.

For a full consideration of any regulatory framework it is helpful to consider all the stages in the policy process. This would include a consideration of why the regulation was created, how it was created, how it is implemented, how it is administrated and how it impacts upon stakeholders and regulatees. It is beyond the scope of this research to consider all the stages in the process. Rather, this research focuses on the adequacy of the regulatory framework that is currently in place by first examining case law from the courts, administrative bodies and tribunals, and then considering the perceptions of regulatory end uses to this existing regulatory framework. These analyses guide the proposals for reform presented in this thesis.



In undertaking this research, the focus is primarily directed towards the effectiveness of codes and standards in improving the living conditions of breeding dogs and in eliminating inappropriate breeding practices. The ability of codes to make breeders accountable for the dogs they produce and the breeding stock they use, and accountable to those that acquire dogs from them, is a central question that this thesis considers.<sup>10</sup>

This thesis focuses on the regulation of the breeding of companion dogs. Another three significant groups of dogs live in Australia that exist outside the companion dog framework. First, there are dogs that exist in the wild and that are considered pests. Secondly there are dogs that are bred to race within the Australian Greyhound Racing Industry. Thirdly there are service, therapy, working farm and assistance dogs. Regulations exist in relation to how the States and Territories confront the control of wild dogs, that regulate Greyhound racing in Australia and that provide guidelines around the training and use of assistance dogs.<sup>11</sup> There are, of course, other legal, health, welfare and stakeholder issues associated with these dogs. These aspects of the Australian dog regulation framework are not considered in this thesis.<sup>12</sup>

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<sup>10</sup> The term 'accountable' is defined in the glossary. The term accountable and 'accountability' are taken to mean essentially the same thing in this thesis, with the exception that 'regulatory accountability' is separately defined.

<sup>11</sup> *Discrimination Act 1992* (Vic) s9(2).

<sup>12</sup> Wild dog populations are controlled in the States and Territories where there they are exist in such high number that they cause threat to livestock by codes of practice that aim to humanely control them and the damage that they do. See for example T Sharp and G Saunders, 'Model Code of Practice for the Humane Control of Wild Dogs' (Department of Sustainability, Water, Population and Communities, 2012). There is research that examines the economic and social impact of wild dogs in Australia and a plan in place that is aimed at managing the impact of wild dogs in Australia. See for example Peter Chudleigh, Sarah Simpson and Jessica Lai, 'Economic Analysis of the National Wild Dog Facilitator Project' (2011) <<http://www.feral.org.au/economic-analysis-national-wild-dog-facilitator/>> The Greyhound Racing Industry is regulated on a State and Territory basis. There is a national not for profit company Greyhounds Australasia that support arm to the State and Territory controlling bodies. Greyhounds Australasia, *History* (2012) <<http://www.galtd.org.au/GreyhoundsAustralasia/index.php?q=node/5>> The way that Greyhounds are kept, raced, bred and how the lives of those Greyhounds that are not able to race end their lives are often topics for concern for animal welfare groups such as the RSPCA. See for example RSPCA Australia, *Greyhound Racing: Gone to the Dogs* (4 February 2014) <<http://www.rspca.org.au/media-centre/press-releases/2014/greyhound-racing-gone-dogs>>.

## PART IV. ORIGINALITY

The originality of this research rests on using aspects of regulatory theory to consider the policy domain of companion dog breeding in Australia. This research borrows from the field of regulatory studies, and in particular responsive regulatory theory, as a pathway to social justice in this area. Regulatory theory provides a framework and guides the discussions that take place in Chapters 6 to 10. When examining the current regulatory environment and ways regulation and the regulatory actors can be made more effective, a regulatory space approach is adopted, adding to the literature that suggests ways to improve outcomes for breeding dogs and the puppies produced by breeders, and the outcomes for those that acquire dogs.

The study of regulation can incorporate many strands. There is room for studies, such as this, that reflect on enforcement, compliance and the regulatory relationships that operate within an industry.<sup>13</sup> Recent regulatory studies literature accepts the challenges of creating accountability in a regulatory environment that is an aggregate of diverse actors deploying diverse methods. Such literature argues that there is a place for an examination of particular regimes to determine how regulation effects outcomes.<sup>14</sup> This research uses regulatory theory when it examines the value of stakeholder perceptions in improving regulation. Parker and others note that there is value in examining the perceptions of those that experience regulation in everyday life and it is an important area of scholarly socio legal research.<sup>15</sup>

## PART V. METHODOLOGY

### 1. Legal Research Methodology

Writers on legal research methodology such as Mertz acknowledge that there is a place for legal research that looks at the role that the law may play in addressing societal problems and that

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<sup>13</sup> Christine Parker, 'Twenty Years of Responsive Regulation: An Appreciation and Appraisal' (2013) 7 *Regulation and Governance* 14, 9.

<sup>14</sup> Colin Scott, 'Evaluating the Performance and Accountability of Regulators' (2013-2014) 37(2 - Winter) *Seattle University Law Review* 3534, 374 and Colin Scott, 'Private Regulation of the Public Sector' (2002) 29(1) *Journal of Law and Society* 56, 57.

<sup>15</sup> Parker, above n 4, 9.

considers the real-world consequences of law.<sup>16</sup> Hasnas, Prentice and Strudler confirm that ultimately the law is about what works<sup>17</sup> and therefore treating law as part of the social sciences provides the opportunity to challenge the usefulness of the law, court decisions and legislation.<sup>18</sup>

Anderson, Reinsmith-Jones and Seidman assert that there is room for studies that seek to understand how law and regulation are perceived, that analyses problems and places the law into the broader sociocultural context in which it operates.<sup>19</sup> Such studies are particularly relevant in countries such as Australia where regulators are quick to use regulation to tackle problems, and to experiment with various forms of regulation in attempts to continually improve laws and compliance with them. When regulation has a plurality of functions, empirical research that gauges the effectiveness and efficiency of regulation in realising policies is necessary.<sup>20</sup>

Seidman and Seidman as well as Rachlinski describe legal research that relies both on empirical evidence and social science research methods as evidence-based legal research.<sup>21</sup> There is growing support for legal research that incorporates and uses facts about society obtained through the use of social science research methods. When conducted appropriately, such

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<sup>16</sup> Rob van Gestel and Hans-Wolfgang Micklitz, 'Why Methods Matter in European Legal Scholarship' (2014) 20(3) (May 2014) *European Law Journal* 292, 292; Elizabeth Mertz, 'Social Science and the Intellectual Apprenticeship: Moving the Scholarly Mission of Law Schools Forward' (2011) 17 *Journal of Legal Writing Institute* , 653.

<sup>17</sup> John Hasnas, Robert Prentice and Alan Strudler, 'New Directions in Legal Scholarship: Implications for Business Ethics Research, Theory, and Practice. ' (2010) 20(3) (June 2010) *Business Ethics Quarterly* 503, 505.

<sup>18</sup> Mathias Siems and Daithi Mac Sitgigh, 'Mapping Legal Research ' (2012) 71(3) *Cambridge Law Journal* 651, 655.

<sup>19</sup> James F Anderson, Kelley Reinsmith-Jones and Nancie J Mangels, 'Need for Triangulated Methodologies in Criminal Justice and Criminological Research: Exploring Legal Techniques as an Additional Method' (2011) 24(1) *Criminal Justice Studies* 83, 97.

<sup>20</sup> Pauline Westerman, 'Breaking the Circle: Goal Legislation and the Need for Empirical Research' (2013) 1(3) *Theory & Practice of Legislation* 395, 413.

<sup>21</sup> Ann Seidman and Robert B Seidman, 'Iltam: Drafting Evidence-Based Legislation for Democratic Social Change ' (2009) 89 *Boston University Law Review* 435, 452 and J J Rachlinski, 'Evidence-Based Law' (2011) 96(4) *Cornell Law Review* 901.

research can provide a legitimate evidence base that is important for legislative reform.<sup>22</sup> Banaka argues there is room for 'bottom up' studies of law in society. These do not look at how the law is enforced but consider the social realities for those receiving and dealing with the law, to understand whether the law reflects its role in society and if it can help to produce more effective modes of social reform.<sup>23</sup>

According to Van Hoecke, there is room in legal research for study that is evaluative and that tests whether rules work in practice, and whether they are in accordance with moral, political and economic aims.<sup>24</sup> Radford extends this to animal welfare research that is necessary to provide law makers with evidence of public opinion on current laws. Such opinions are important when considering change, particularly in areas of social justice where there are conflicting interests and opinions that require an exercise of judgement, ultimately falling to politicians to decide.<sup>25</sup> Policy matters influence the lives of animals, and no more so than captive animals, such as dogs, bred to serve as our companions.

## 2. Regulatory Research Methodology

This research adopts a critical social approach, which is appropriate where the various stakeholders whose views are being examined experience phenomena in different ways, and where research seeks to understand how human experiences inform the way a participant will answer a question. This approach accepts that '*social reality is constantly being shaped by social, political, cultural and other factors.*'<sup>26</sup> Critical researchers use theories to find answers, drawing

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<sup>22</sup> Terry Hutchinson, 'Empirical Facts: A Rationale for Expanding Lawyer's Methodological Expertise' (2013) 2(3) *Recht en Methode in onderzoek en onderwijs* 53, 53.

<sup>23</sup> Reza Banaka, 'Having One's Cake and Eating it Too: The Paradox of Contextualism in Social-Legal Research' (2011) 7(4) *International Journal of Law in Context* 487, 488 and 496.

<sup>24</sup> Mark Van Hoecke (ed), *Methodologies of Legal Research* (Hart Publishing, 2011).

<sup>25</sup> Mike Radford, *Animal Welfare in Britain: Regulation and Responsibility* (Oxford University Press 2nd ed, 2002), 167.

<sup>26</sup> W Lawrence Neuman, *Social Research Methods: Qualitative and Quantitative Approaches* (Pearson Education Inc., 5th Edition ed, 2003), 81.

on experiences, concepts, signs, events and interactions between social objects.<sup>27</sup> This research is theory driven, and draws from regulatory theory, animal welfare regulatory theory, and dog breeding literature to develop an underlying structure from which to analyse, interpret and explain the data obtained by this research.

For research to be effective its theoretical framework should align with the researcher's own views of reality.<sup>28</sup> This has been achieved by recognising that dog breeding in Australia is complex and that dogs are bred in many varied ways and for many different purposes. Dog breeders can hold vastly different breeding objectives. Irrespective of motivations regulation, must play a role in ensuring that all dogs are cared for.

This research is approached with the belief that the world in which dog breeding takes place is socially constructed, and that the data provided by stakeholders is influenced by their own history and culture, and is expressed in the language that the information provider is most comfortable with.<sup>29</sup> The research is both descriptive and normative, in that it examines the issues and asks what the role of regulation in dog breeding should be and how effective it currently is. As much of this research is qualitative, a wide range of interconnected interpretive methods have been deployed.<sup>30</sup> A network governance approach is used to evaluate the effectiveness of regulation which recognises the importance of normative approaches to law and regulation.<sup>31</sup> This research adopts an instrumental perspective, exploring, through collecting

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<sup>27</sup> Ibolya Losoncz, 'Methodological Approaches and Considerations in Regulatory Research' in Peter Drahos (ed), *Regulatory Theory Foundations and Applications* (ANU Press 2017) 784, 84.

<sup>28</sup> Jane Mills, Ann Bonner and Karen Francis, 'The Development of Constructivist Grounded Theory' (2006) 5(1) (2006) *International Journal of Qualitative Methods*, 26.

<sup>29</sup> Gareth Morgan and Linda Smircich, 'The Case for Qualitative Research ' (1980) 5 *Academy of Management Review* 491, 494.

<sup>30</sup> Norman K Denzin and Yvonne S Lincoln, *Handbook of Qualitative Research* (Sage Publications, 1994), 4 & 12.

<sup>31</sup> Colin Scott, 'Analysing Regulatory Space: Fragmented Resources and Institutional Design ' (2001) Summer *Public Law* 329.

data from stakeholders on the ways in which the current regulatory framework should be changed to improve outcomes for dogs and dog buyers.<sup>32</sup>

This research gathers evidence from stakeholders through interviews, an archival data search and through surveys. The use of interviews provides detailed data around each participant group's perspectives of the current regulatory framework and its ability from their own experiences, to meet the issues in in dog breeding.<sup>33</sup>

## PART VI. RELEVANCE AND CONTRIBUTION

### 1. Methodological Relevance

This research examines the issues within the context of hobby and commercial dog breeding and reflects on the role and effectiveness of regulation, with particular emphasis on breeding codes, in addressing them. It is regulatory research that is underpinned by doctrinal and theoretical analysis of the current regulation of dog breeding in Australia. As such the methodological approaches that are adopted are appropriate to regulatory research.

Losoncz acknowledges that little work has been published that explicitly describes the methodological approaches that are appropriate for regulatory research.<sup>34</sup> This research adopts both a methodological approach and methods that are appropriate for an exploration into the regulation and regulatory actors and the interplay between these actors and the views of the stakeholders in dog breeding. This research gathers evidence from stakeholders through interviews, an archival data search and surveys. The use of interviews provides data on participant's perspectives of the current regulatory framework and its ability to meet the issues that exist in dog breeding.<sup>35</sup> The survey of owners provides data that can be analysed to determine the understanding consumer dog owners have around their rights as consumers and

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<sup>32</sup> Hasnas, Prentice and Strudler, above n 18, 51.

<sup>33</sup> David E Gray, *Doing Research in the Real World* (Sage, 2014), 383.

<sup>34</sup> Losoncz, above n 28, 77.

<sup>35</sup> Gray, above n 34, 383.

their relationship with the producer of their dog.<sup>36</sup> The survey of dog breeders provides data on motivations for breeding and documentation provided by dog breeders when selling their puppies.

The process of concurrent data collection and the analysis of these sets of data provides the researcher with explanations and an ability to consider the four research components that together answer the research question. The processes performed in analysing the data are explained in Chapter 5. These processes are iterative, allowing themes to be extracted to answer the 4 research components.<sup>37</sup> The researcher has remained mindful of the need to interpret this empirical evidence carefully and to continually assess its validity and relevance as is required in all legal and legal doctrinal research that adopts an inter disciplinary approach.<sup>38</sup>

## 2. Theoretical Relevance

There is a relatively small number of scholarly studies that have examined the role of regulation in improving outcomes for dogs and dog owners, and few that have identified factors (both external and internal to organisations) that are related to the success of self-regulation and compliance initiatives.<sup>39</sup> The theoretical rationale, or ontology that this research adopts in seeking to understand the role of regulation in dog breeding is to consider the views that are expressed by the stakeholders and to examine how they have experienced regulation. There is a body of regulatory theory literature that argues that to understand what makes people comply, researchers must collect data around attitudes, motivations and actual behaviour and its policy outcomes.<sup>40</sup> There is a need for data to be collected that provides an understanding of stakeholder's view of the role of regulation and of what improves compliance. There is also a

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<sup>36</sup> Michael Healy and Mike Rawlinson, in V J Wass and P E Wells (eds), *Principles and Practice in Business and Management Research* (Dartmouth Publishing Co Ltd 1994) , 126.

<sup>37</sup> Losoncz, above n 28, 85.

<sup>38</sup> van Gestel and Micklitz, above n 17, 310 and Anderson, Reinsmith-Jones and Mangels, above n 20, 84.

<sup>39</sup> Christine Parker, *The Open Corporation* (Cambridge University Press, 2002)4, 43.

<sup>40</sup> Christine Parker and Vibeke Lehmann Nielsen, 'The Challenge of Empirical Research on Business Compliance in Regulatory Capitalism' (2009) 5(1) *Annual Review of Law and Social Science* 454, 64.

role for regulatory research that takes a socio legal approach, examining the form, scope and effectiveness of regulation and those that enforce it.<sup>41</sup> This research makes a relevant theoretical contribution that is both original and useful.<sup>42</sup>

### 3. Practical and Societal Relevance and Contribution

There has been minimal scholarly research in Australia around the industry and hobby of dog breeding. There is growing media focus on dog breeding that highlights concerns, both in terms of the health of breeding stock and the health of puppies being produced. There has been research undertaken that reviews policies around dog breeding in another country, but there are no studies in Australia that consider the issues in depth and the role that industry codes might play in addressing them.<sup>43</sup>

The lives of dogs and humans have been intertwined for many hundreds of years and this will continue as dogs play fundamental roles in the lives of so many Australians.<sup>44</sup> Dogs are not eaten by humans in Australia and no longer live in laboratories. Pets in general and dogs in particular are wonderful companions and provide significant psychological and physiological benefits to their owners and there is a growing body of literature that confirms this, both in Australia and around the world.<sup>45</sup> There can be no denying how connected the lives of dogs and humans are

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<sup>41</sup> The researcher adopts the view that socio legal scholars seek to examine the role and place of law within the realms of social, political and economic life. Philippe Nonet and Philip Selznick, *Law & Society in Transition: Towards Responsive Law* (Transaction Publishers 4th ed, 2009), vii and Banaka, above n 24, 487.

<sup>42</sup> Kevin G. Corley and Dennis A Gioia, 'Building Theory About Theory: What Constitutes A Theoretical Contribution?' (2011) 36(1) *Academy of Management Review* 12, 17.

<sup>43</sup> Amy Morris, *Policies to Promote Socialization and Welfare in Dog Breeding* (Public Policy Thesis, Masters Thesis, Simon Fraser University 2013), 24.

<sup>44</sup> Dogs play roles in dog sport; in the hobby or business of dog breeding and dog showing; in organisations such as the police, military, customs, in medicine, in quarantine services, as guide dogs and as working dogs on farms.

<sup>45</sup> Ash Turner, *Paws for thought: exploring a framework for understanding the mediating role of dogs in people's learning processes in vocational education and training settings. A qualitative study of the use of dogs as mediating artifacts in Australian vocational education and training settings in the Townsville region* (PhD Thesis, James Cook University 2011) Steve Remic, *The Companion Animal in the Context of a New Interpersonal Relationship* (Bachelor of Science (Psychology) Honours Thesis, Honours Thesis, Edith Cowan University 2012); Animals Australia, 'Companion Animals Fact Sheet' (2010) <[http://www.animalsaustralia.org/factsheets/companion\\_animals.php](http://www.animalsaustralia.org/factsheets/companion_animals.php)>; Claire Mulcahy and Deirdre McLaughlin, 'Is the Tail Wagging the Dog? A Review of the Evidence for Prison Animal



and this has been examined, re-examined and extended in literature for many years.<sup>46</sup> At both a national and international level there are many businesses and organisations that specifically exist because of dogs. Some operate to promote dogs and dog breeding;<sup>47</sup> others exist to provide support for dogs and other animals.<sup>48</sup> Yet others, such as veterinarian businesses, pet food companies and suppliers of animal products, exist because of the business opportunities that arise because of humans' relationships with animals. Hall and others confirm that the economic contributions the companion animals make to our society continues to grow annually.<sup>49</sup>

According to Sankoff, White and Burdon, until recently the focus of animal law and regulation has been the protection of economic rights in animals. These writers argue that there has been little exploration of the legal obligations owed by humans towards animals.<sup>50</sup> There has been even less focus on the law's role in sustaining animal species into the future. This thesis

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Programs' (2013) 48 *Australian Psychologist* 369; Phil Arkow, 'The Impact of Companion Animals on Social Capital and Community Violence: Setting Research, Policy and Program Agendas' (2013) 40(4) *Journal of Sociology & Social Welfare* 33, 51 and Vanessa Ilse Rohlf, *Beliefs Underlying Dog Owner's Management Practices* (Doctor of Philosophy Thesis, PhD Thesis, Monash University 2013), 9 and Kirrilly Thompson et al, 'No Pet or their Person Left Behind: Increasing the Disaster Resilience of Vulnerable Groups through Animal Attachment, Activities and Networks' (2014) 4(2) *Animals* 214.

<sup>46</sup> Donna Jeanne Haraway, *The Companion Species Manifesto: Dogs, People, and Significant Otherness* (Prickly Paradigm, 2003); Chris Vanderwees, 'Companion Species Under Fire: a Defense of Donna Haraway's The Companion Species Manifesto' (2009) 6(2) *Nebula* 73; David Paxton, *Why It's Ok To Talk To Your Dog* (Boolarong Press, 2011); Harriet Ritvo, *The Animal Estate* (Harvard University Press, 1987), 82.

<sup>47</sup> Federation Cynologique Internationale, *For Dogs Worldwide* (2010) <<http://www.fci.be/presentation.aspx>>.

<sup>48</sup> There are many international, national and local animal advocacy and welfare groups, some that operate specifically for dogs. Some examples; Oscars Law, operates nationally to advocate against puppy mills. Animals Australia operates nationally to promote kindness to animals. Animals Australia, *Animals Australia - the Voice for Animals* (2013) <<http://www.animalsaustralia.org/>> Internationally there are groups such as the International Fund for Animal Welfare IFAW, *International Fund For Animal Welfare* (2012 2012) <<http://www.ifaw.org/united-states/about-ifaw>> and the International Coalition for Animal Welfare ICAFW, *ICFAW: Representing Global Animal Welfare Organisations at the OIE* (2013) <<http://icfaw.org/>>.

<sup>49</sup> Sophie Hall et al, *Companion Animal Economics* (CABI, 2016), 2.

<sup>50</sup> Peter J Sankoff and Steven William White, *Animal Law in Australasia: A New Dialogue* (Federation Press, 2009) , 1 and Peter D Burdon, *Earth Jurisprudence: Private Property and Earth Community* (PhD Thesis, Doctor of Philosophy Thesis, University of Adelaide, 2011) , 13.

contributes to the literature by considering our obligations to breeding dogs and puppies and the role and effectiveness of regulation in protecting dogs and dog buyers. It also considers the role that regulation may play in working towards sustainable dog breeding practices.

Australian animal welfare and regulatory studies do not contain an examination of the role and importance of regulatory techniques in practice as it relates to the current issues facing dog breeding. Gemmel asserts that there is much hidden when it comes to animal welfare. He argues that legislation plays a role but until there is quantifiable data that can be used to assess its use in improving outcomes for animals it is impossible to determine the extent of its role and effectiveness.<sup>51</sup> This research contributes in this regard by collecting and analysing data around the effectiveness of regulation in dog breeding.

For these reasons, scholarship that proposes ways that regulation can address the issues in dog breeding has high social relevance. Regulatory theorist Braithwaite notes the usefulness of scholarship in industry or business that examines a societal problem that is coupled with options for change.

*Scholars have a role in opening the imaginations of social movement activists to options for struggle to secure more ethical business practices.*<sup>52</sup>

The health and welfare issues facing pure breed dogs and the consumer welfare aspects of buying and owning a dog that has genetic, health, temperament or behavioural issues that have not been adequately disclosed are consuming a lot of time for a number of stakeholders in dog breeding. Such issues are of concern to a number of stakeholders including: the Australian National Kennel Club; State and Territory canine associations and State government animal welfare advisory groups. A consolidated look at these issues and the views that stakeholders have, and an assessment of the regulatory framework and associated regulatory techniques that will best address the issues, is of value.

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<sup>51</sup> Bruce Gemmel, 'Review of the Animal Welfare Strategy (AAWS)' (2009) <[http://www.daff.gov.au/\\_\\_data/assets/pdf\\_file/0006/1935591/review-aaws.pdf](http://www.daff.gov.au/__data/assets/pdf_file/0006/1935591/review-aaws.pdf)>, 3.

<sup>52</sup> John Braithwaite, 'Flipping Markets to Virtue with Qui Tam and Restorative Justice' (2012) *Accounting Organizations and Society* 1, 6.

Legal scholars such as Bruce acknowledge that there can be a challenge around how practical, legal, regulatory and institutional processes can be used to close the gap between how the public perceives animal industry practice and its reality. This thesis seeks to address this challenge by examining perceptions and realities around breeding and the role of regulation in closing this gap.<sup>53</sup>

Despite the many benefits that companion animals bring to our society, dogs are unable to look after their own rights and welfare. An individual dog or dog breed does not have its own voice, so it is left to the various stakeholders to voice concerns for both individual dogs and for the various dog breeds. There are many stakeholders that are interested in promoting the welfare and interests of dogs and dog activities. This research identifies these stakeholders and acknowledges that there are differences in opinion on various aspects of dog welfare and dog rights. What is not disputed amongst the stakeholders is that it is the role of companion animal owners to properly care for their animals and that some humans will not act in the best interests of the animals they own or interact with all of the time.

Practical legal research that combines traditional legal research methods such as case law analysis with traditional social science methodologies is useful and can help to improve the quality of research especially if researchers use multiple methods.<sup>54</sup> Such research is more able to consider law and regulation within its social context, provided it is capable of looking at alternative answers to the problem.<sup>55</sup> This research uses traditional legal research methods to provide descriptions and explanations. It uses social science methods to understand how stakeholders perceive the issues and the role of regulation.<sup>56</sup> This research ponders both the role that regulation may have in addressing the issues and it examines its effectiveness whilst

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<sup>53</sup> Alex Bruce, *Animal law in Australia: An Integrated Approach* (LexisNexis Butterworths, 2012), 67.

<sup>54</sup> Anderson, Reinsmith-Jones and Mangels, above n 20, 101.

<sup>55</sup> Banaka, above n 24, 487 and van Gestel and Micklitz, above n 17, 314.

<sup>56</sup> Van Hoecke, above n 25, 70.

recognising that other solutions such: as advocacy; education; and raising community awareness, may also assist dogs, dog owners and breeders.

The outcomes from this study will have value to those that breed dogs and those that regulate dog breeding. It will also have value to those working with other companion animals that face similar issues, such as cats and companion rabbits. This study will inform future animal welfare strategies for governments that understand the importance of companion animals within the community, and the importance of the establishment of a regulatory framework that supports animals, owners and responsible breeders.<sup>57</sup> This research has practical and policy relevance and it may provide a model for companion animal industries.

Each animal breeding industry is unique and those that are responsible for establishing, monitoring and enforcing regulation need to understand the types of regulatees that operate within it before they establish or review regulation. Similarly, before the current regulatory framework that exists in dog breeding can be considered and its effectiveness assessed, a good understanding of the current industry and those that operate within it and what motivates them is required. The following part of Chapter 1 provides an overview of the industry and the motivations of the groups of breeders that operate within it.

## PART VII OVERVIEW OF THE INDUSTRY

### 1. Introduction.

Dogs play an integral role in the lives of many Australians and approximately 36% of households in Australia own a companion dog.<sup>58</sup> Some people are prepared to pay up to \$6000 for a companion dog.<sup>59</sup> Others are happy to acquire their new companion more cheaply by

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<sup>57</sup> Parker, above n 4, 9.

<sup>58</sup> Australian Companion Animal Council, 'Contribution of the Pet Care Industry to the Australian Economy - 7th Edition' (Animal Health Alliance 2010), and Animal Health Alliance of Australia, 'Pet Ownership in Australia ' (2014) and A J Kolbelt et al, 'A Survey of Dog Ownership in Suburban Australia - Conditions and Behaviour Problems' (2003) 82(2) *Applied Animal Behaviour Science* 137.

<sup>59</sup> Marcus Caroline 'Puppy Love Drives Change in Demand' , *The Sunday Tasmanian* (Hobart), 16 December 2012, 12 and Liam Mannix, 'Pet Shops, Dog Breeders Irate at Cost of Plan to Stop Puppy Farms', *The Victorian Age*

responding to an advertisement in their local newspaper, going online to for sale websites or by visiting local animal shelters or local pounds. Dogs come in many different shapes, sizes and breeds. New owners can select from one of over 200 pure breeds that exist in Australia or they can acquire a mixed breed dog or select a designer dog.<sup>60</sup>

Of the various companion animals, dogs play a particularly significant role in the lives of many people and often a dog is not just a companion animal, but a member of the family. Dogs provide emotional, physical and psychological support to their owners and to those that come into contact with them. This can be confirmed by an examination of the vast array of books and articles that have been written about dogs, some dating back almost 100 years. Topics include: the history of dogs; dog genetics; how to breed and manage dogs; the role of dogs; how to show dogs; how to train dogs and the various types of dogs that have become part of our lives.<sup>61</sup> The importance of the physical, emotional and psychological connection between animals and humans is recognised in disciplines such as: anthrozoology; human-animal studies;<sup>62</sup> applied

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(Melbourne ), 28 February 2015 <<http://www.theage.com.au/victoria/pet-shops-dog-breeders-irate-at-cost-of-plan-to-stop-puppy-farms-20150227-13qsvv.html>>.

<sup>60</sup> A designer dog is a dog with parents of different breeds. They originated with the creation of the Labradoodle by Australian Wally Conron who intended to create a low allergenic guide dog. Now in his mid-80's Wally Conron has indicated that the creation of the Labradoodle has led to the breeding of a large number of unhealthy and abandoned dogs. Michael B Beverland, Francis Farrelly and Elison Ai Ching Lim, 'Exploring the Dark Side of Pet Ownership: Status- and Control-based Pet Consumption' (2008) 61(5) *Journal of Business Research* 490.. Ben Walker, 'Creator of Labradoodles Laments Designer Dog Craze', *Delawareonline* (USA), 10 February 2014 <<http://archive.delawareonline.com/article/20140211/LIFE/302110023/Creator-Labradoodles-laments-designer-dog-craze>> and Lindsay L Farrell et al, 'The Challenges of Pedigree Dog Health: Approaches to Combating Inherited Disease' (2015) 2:3 *Canine Genetics and Epidemiology* 1, 10.

<sup>61</sup> A Croxton Smith, *About Our Dogs : The Breeds and their Managment* (Ward, Lock & Co, 1931), Hillary Harmer, *Dogs and How to Breed Them* (W. & G. Foyle Ltd 1968), Arthur Liebers, *Companion Dogs* (Thomas Yoseloff Ltd Second ed, 1973) Jack Pollard (ed), *Wild Dogs, Working Dogs, Pedigrees & Pets; Dog and Man in Australian and New Zealand life* (Lansdowne Press Pty Ltd 1968); Catherine Sutton, *Dog Shows and Show Dogs A Definitive Study* (K & R Books Ltd, 1980) Malcolm B Willis, *Genetics of the Dog* (Witherby, 1989), Frank Jackson, *Dog Breeding* (The Crowood Press Ltd, 1994), Helen Furber, *Furber's Consice Encyclopedia of Dogs* (Watermark Press Ltd 1995).

<sup>62</sup> Australian Anthrozoology Research Foundation, *The World of Anthrozoology* (2012) <<http://www.anthrozoologyfoundation.org/the-world-of-anthrozoology/>> and Anthony Podberscek, L, Elizabeth Paul, S and James A Serpell (eds), *Companion Animals & Us: Exploring the Relationships Between People and Pets*

animal behaviour studies, particularly the study of the human animal interaction or (HAI)<sup>63</sup>; psychology and medicine (particularly the study and practice of animal assisted therapy).<sup>64</sup>

Some dogs play active roles in society that go beyond being companions for people. There are numerous examples of dogs that work for humans: farm dogs; police dogs; guide dogs; therapy dogs; and drug and cancer detection dogs.<sup>65</sup> The literature that looks at the role that dogs play in the lives of everyday people in our modern society has grown significantly over the last ten years.<sup>66</sup> There is evidence that dog ownership can increase social interactions for their owners<sup>67</sup>

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(Cambridge University Press, Digitally Printed First Paperback Version 2005 ed, 2000 ), 1 and Shelly Volsche and Peter Gray, "'Dog Moms' Use Authoritative Parenting Styles' (2016) 4(2) *Human Interaction Bulletin* 1.

<sup>63</sup> David Goode, *Playing with my Dog Katie: An Ethnomethodological Study of Dog-Human Interaction* (Purdue University Press, 2006), Claire Mulcahy and Deirdre McLaughlin, 'Is the Tail Wagging the Dog? A Review of the Evidence for Prison Animal Programs' (2013) 48 *Australian Psychologist* 369, Lisa Wood et al, 'The Pet Factor - Companion Animals as a Conduit for Getting to Know People, Friendship Formation and Social Support' (2015) 10(4) *PLOS One* , Karin Hediger and Dennis C Turner, 'Can Dogs Increase Children's Attention and Concentration Performance? A randomised Controlled Trial.' (2015) 2(2) *Human-Animal Bulletin* 21 and Hannah Wright, 'Effects of Pet Dogs for Children with Autism Spectrum Disorders (ASD) and their Families: Expectations versus Reality' (2016) 38 *Human Interaction Bulletin* .

<sup>64</sup> Cynthia K Chandler, *Animal Assisted Therapy in Counseling* (Taylor and Francis, 2 ed, 2011), 16 and see Australian Network for the Development of Animal Assisted Therapy (ANDAAT), *What is Animal Assisted Therapy* (2010 2010) <<http://www.andaat.org.au/site/home/whatisaat>> and Gregg K Takashima and Michael J Day, 'Setting the One Health Agenda and the Human-Companion Animal Bond' (2014) 11(11) *International Journal of Environmental Research and Public Health* 11110 .

<sup>65</sup> T King, L C Marston and P C Bennett, 'Breeding Dogs for Beauty and Behaviour: Why Scientists Need to do more to Develop Valid and Reliable Behaviour Assessments for Dogs kept as Companions' (2012) 137(1-2) *Applied Animal Behaviour Science* 1, 3 and Amy Barth, 'Super Sniffers ' (2014) 71(1) *Science World* 20 and Jeremiah K Geffe, 'License to Sniff: The Need to Regulate Privately Owned Drug-Sniffing Dogs' (2016) 167 *Journal of Gender, Race & Justice* 167 , 168.

<sup>66</sup> Samantha E Kennedy, 'More than Man's Best Friend: A Look at Attachment between Humans and their Canine Companions' (2005) 6-1-2005 *University of South Florida Scholar Commons* and Lena Nordgren and Gabriella Engstrom, 'Effects of Dog-assisted Intervention on Behavioural and Psychological Symptoms of Dementia' (2014) 26(3) *Nursing Older People* .

<sup>67</sup> J McNicholas and G M Collis, 'Dogs as Catalysts for Social Interactions: Robustness of the Effect' (2000) 91 ( Pt 1)(Journal Article) *British Journal of Psychology (London, England: 1953)* 61, Adrian Franklin, 'Human-Nonhuman Animal Relationships in Australia: An Overview of Results from the First National Survey and Follow-up Case Studies 2000-2004' (2007) 15 *Society and Animals* 7, 14, Phil Arkow, 'The Impact of Companion Animals on Social Capital and Community Violence: Setting Research, Policy and Program Agendas' (2013) 40(4) *Journal of Sociology*

and that for many the bond they have with their dog is one of their most important relationships.<sup>68</sup> Dogs also play a vital role in human medical research, as many are bred from easily identifiable ancestors.

Companion dogs can help in education,<sup>69</sup> increase our physical activity,<sup>70</sup> are used as assistance and therapy dogs and help humans develop effective interpersonal and other skills.<sup>71</sup> There are programs that operate in Australia that promote relationships between the elderly and other groups of individuals in society that benefit from interaction with dogs.<sup>72</sup> A good example of the growing recognition of the role of dogs in Australian society is the recent inclusion into Australian Food Standards of an amendment which allows companion dogs to be present in outdoor dining areas of food businesses. This is an acknowledgment that a meal or a beverage with a companion dog is a significant way of life for many people.<sup>73</sup>

More and more Australians are coming to regard their dogs as members of the family and scholarship around dogs and their importance continues to grow. What is also necessary is scholarship in how these dogs are bred and the regulation that exists to regulate how they are bred. Any regulation that is established must recognise that dogs are relatively easy to breed

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& *Social Welfare* 33; Krista Marie Clark Cline, 'Psychological Effects of Dog Ownership: Role Strain, Role Enhancement, and Depression' (2010) 150(2) *Journal of Social Psychology* 117, 37 and Wood et al, above n 3.

<sup>68</sup> Elizabeth Ormerod, 'Companion Animals' (2005) 9(3) *Working with Older People* 23 and McNicholas and Collis, above n and Miho Nagasawa, Mogi Kazutake and Takefumi JKikusui, 'Attachment Between Human and Dogs' (2009) 51(3) *Japanese Psychological Research* 209.

<sup>69</sup> Bernadette Nicholls, *What's a Dog got to do with Education? Illuminating what matters in Education and in Life* (Doctor of Philosophy Thesis, Doctorate Thesis, La Trobe University, 2011).

<sup>70</sup> Hayley Emma Christian, *The Relationship Between Dog Ownership and Physical Activity* (Doctor of Philosophy Thesis, University of Western Australia 2007).

<sup>71</sup> Marilyn J Kwong and Kim Bartholomew, 'Not Just A Dog' An Attachment Perspective On Relationships with Assistance Dogs ' (2011) 13(5) (September ) *Attachment & Human Development* 421 ; Arkow, above n 7, 36.

<sup>72</sup> Jane Fossey and Vanessa Lawrence, 'Staff Views on the Involvement of Animals in Care Home Life: An Exploratory Study' (2013) 40(4) *Journal of Sociology & Social Welfare* 305.

<sup>73</sup> Food Standards Australia and New Zealand, *Australia New Zealand Food Standards Code* (At October 2012) Amendment 135.

and of course not all dogs born in Australia are bred within what might be considered the industry of dog breeding. Anyone with an entire bitch and an entire male dog could breed them. Regulation must recognise the various types of breeders that exist in Australia.

## 2. Types of Breeders

In Australia dog breeders can be grouped in various ways. There are those who breed as recreationally, those who breed to make money and those who breed accidentally or occasionally outside of the regulated environment. It has been estimated that over 420 000 puppies were born in Australia in 2017. A large proportion of these are currently being born outside of the regulated environment. It is not conceivable that regulatory agencies can reach into every home to deal with every litter of puppies born in Australia.<sup>74</sup> It will never be possible to regulate all breeding, but regulation does play a role in ensuring that dogs are being born in ways that promote their welfare. This research proposes that a larger proportion of breeders may be brought within the regulated environment by the mechanisms considered later in this thesis, particularly in Chapter 10.

Not all breeders are able to be regulated in the same way, so it is necessary to categorise breeders. This research groups breeders broadly into the following three groups:

1. Commercial breeders
2. Pedigree recreational hobby breeders
3. Backyard and occasional breeders

There is a range of breeders who breed commercially. Some of these breeders run large commercial facilities where dogs are kept in outside kennel facilities. These dogs are often treated as 'breeding stock' and not considered to be family members or companions. Within those who breed this way there are those who do not do so in a way that supports effective dog welfare (those whom the public perceive to

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<sup>74</sup> Randall Abate (ed), *What can Animal Law learn from Environmental Law* (Environmental Law Institute 2015), xxv.



be 'puppy farmers'). There are others who breed in large numbers but who are more open about their practices and who may comply with dog welfare requirements.

The second group are those breeders that breed pure breed dogs as a member of a canine association such as the ANKC and the State and Territory canine associations. Members of such organisations are typically smaller or hobby dog breeders. Some of these breeders do breed in larger numbers than would suggest hobby breeding but the clear majority, over 90% of the 32543 ANKC registered breeders breed less than 4 litters a year.<sup>75</sup>

Dogs are also bred by a third 'group of breeders' – the backyard, accidental and occasional breeders. A large proportion of this group of breeders, especially those who breed low numbers of puppies, may well breed outside of any established regulatory framework.

### 3 Commercial Dog Breeding

There is increasing media attention on commercial breeding where the welfare of the dogs and puppies produced are below what is reasonably expected or tolerated by the community. The term '*puppy farming*' has grabbed media attention for a number of years.<sup>76</sup> There are advocacy groups whose aim is to keep the plight of dogs and puppies bred on puppy farms in the political arena.<sup>77</sup> The issue of the standard of care that dogs living in commercial breeding institutions

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<sup>75</sup> Australian National Kennel Council Limited, 'A Forensic View of Puppy Breeding in Australia 2017' (2017) <<http://ankc.org.au/media/6598/a-forensic-view-of-puppy-breeding-in-australiav4.pdf>>; *ibid.* From the data obtained through national statistics kept by the ANKC less than 5% of the 32543 breeders registered with the ANKC in 2016 bred more than 4 litters. These breeders accounted for less than 17% of puppies born in Australia in 2016. In 2016 there were 32543 ANKC registered breeders. Of these 55% only bred one litter in 2016, 21% bred two litters, 10% bred three litters, 5% bred four litters and only 9% bred five or more litters.

<sup>76</sup> Katherine Cooke, 'Defining the Puppy Farm Problem: An Examination of the Regulation of Dog Breeding, Rearing and Sale in Australia' (2011) 5 *Australian Animal Protection Law Journal* 3, 4.

<sup>77</sup> Nine News, *Puppy Farm Raid* (2013) <<http://www.youtube.com/watch?v=mkQ5C647ED8&feature=youtu.be>>, Caroline Zielinski, 'RSPCA Rescues 100 Dogs in Puppy Farm Raid', *The Age* 1 November 2013 2013 <<http://www.theage.com.au/environment/animals/rspca-rescues-100-dogs-in-puppy-farm-raid-20131101-2wmp.html>>; Susie O'Brien, 'Cruelty of Puppy Farms Stains Victoria', *Herald Sun* (Victoria), 1 June 2014 2014 <<http://www.heraldsun.com.au/news/opinion/cruelty-of-puppy-farms-stains-victoria/story-fni0fhie-1226938393613>>; Sarah Dean, 'The Dog Farm Dungeon: No Sunlight, No Fresh Air and Surrounded by their Own Filth - Puppies Rescued from Squalid Underground Bunker', *Daily Mail Australia* (Melbourne), 6 June 2014 <<http://www.dailymail.co.uk/news/article-2649753/No-sunlight-no-fresh-air-surrounded-filth-How-woman-kept-12-puppies-trapped-squalid-underground-bunker-dog-farm.html>>; Beau Donnelly, 'Diseased, Injured Dogs Rescued from Puppy Farm', *The Age Victoria* (Victoria), 2014 <<http://www.theage.com.au/victoria/diseased-injured-dogs>>

receive and the appropriateness of companion animals being bred in conditions similar to those of farm animals has received attention from government both at national and State level for a number of years, with statements being made registering strong disapproval of inappropriate breeding practices and 'puppy farming'.<sup>78</sup> There is no statutory or common law definition of the term 'puppy farm' in Australia. This thesis defines the term 'puppy farm' in the glossary after reviewing material produced by the RSPCA and work conducted by Cooke in 2011.<sup>79</sup>

Cooke considered the regulation of dog breeding and selling in Australia in 2011 without specifically focusing on the role of industry codes. Her work looks at role of the RSPCA, the reality of puppy farms, the State and Territory anti cruelty and welfare legislation and the breeding codes that existed then in South Australia, Victoria and New South Wales.<sup>80</sup> Her work sets out the details in the State breeding codes around housing, transport, limits on breeding, record keeping, point of sale regulation and exercises and penalties for breaches. She advocates for legislation that sets out clear objectives for the regulation of intensive breeding of companion animals and notes that the current enforcement mechanisms do not contend with the consequences of puppy farms, both the welfare aspects and the management realities over dog over population. She suggests what is needed is more than a review of minimum welfare

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rescued-from-puppy-farm-20140721-zt6x3.html> and ABC News, *RSPCA Wants Help Finding North Coast 'Puppy Farms'* (14 May 2015) <<http://www.abc.net.au/news/2015-05-14/rspca-wants-help-finding-north-coast-27puppy-farms27/6468626>>, Marika Dobbin, 'Filthy, Hungry and Cramped. Puppy Factory Raided', *The Age* (Victoria ), 8 June 2016 2016 <<http://www.theage.com.au/victoria/filthy-hungry-and-cramped-puppy-factory-raided-20160608-gpce1x.html>>, and Ellen Whinnett and Rob Harris, 'Show Dogs Shame ', *Herald Sun* (Melbourne ), 9 June 2016, 1.

<sup>78</sup> A puppy farm is defined in the glossary. Puppy farming is defined by the RSPCA as: -

- 1) the breeding of puppies for sale in pet shops, with the parents living in often terrible conditions. RSPCA Australia, 'Legislating to End Puppy Farming - The Way Forward' (2012) <<http://kb.rspca.org.au/afile/508/99/>>. or
- 2) intensive dog breeding facilities that are operated under inadequate conditions that fail to meet the dogs' behavioural, social and/or physical needs.' RSPCA Australia, *What is a Puppy Farm?* (2012) <[http://kb.rspca.org.au/What-is-a-puppy-farm\\_322.html](http://kb.rspca.org.au/What-is-a-puppy-farm_322.html)>.

<sup>79</sup> Cooke, above n 64, 4.

<sup>80</sup> Ibid.

standards and suggests a more holistic approach that includes the offences of both puppy farming and animal hoarding.

Cooke suggests that there is community dislike of the idea that companion animals can be bred for profit at the expense of their welfare.<sup>81</sup> She asks, should dogs even be bred intentionally? She makes no reference to the reality of the hobby of dog breeding or to the breeding of pure breed dogs or the role of industry actors in making the breeding undertaken by their members transparent. What remains true is that often, large breeding facilities are beyond the view of the community and they breed puppies for sale in pet shops and through internet sales, irrespective of the reality of dog overpopulation and with little likelihood of oversight by any regulatory actor.<sup>82</sup> There is no industry body that regulates, mandates or oversees breeding practices of all dog breeders in Australia so it is difficult to determine what motivates individual dog breeders to breed, and to comply with animal welfare regulation when they do breed. There is no real method of looking at what breeders are doing to ensure appropriate outcomes for their breeding dogs and the puppies they produce or appropriate outcomes for those that acquire puppies from them. What motivates breeders is considered in this research in Section 5 in this Part of this Chapter and the empirical evidence obtained is considered in Chapters 7 and 8.

#### 4. Pedigree Recreational Hobby Breeding

##### 4.1 Introduction

At State and Territory level, canine associations have existed in Australia for close to a hundred years.<sup>83</sup> The State and Territory canine associations encourage and provide regulation over a number of dog sports and activities such as: dog agility; conformation dog showing; dancing with dogs; herding, lure coursing; earth day eventing; dog endurance and field training; obedience;

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<sup>81</sup> Ibid, 5.

<sup>82</sup> Linda C Marston, Pauleen C Bennett and Grahame J Coleman, 'What Happens to Shelter Dogs? An Analysis of Data for 1 year from Three Australian Shelters' (2004) 7(1) *Journal of Applied Animal Welfare Science : JAAWS* 27, 29, Austin King, 'Pets Being Dumped or Roaming Rockhampton Streets', *The Morning Bulletin* (Rockhampton), 14 January 2013 <<http://www.themorningbulletin.com.au/news/puppy-dumped-at-dog-pound/1715275/>>.

<sup>83</sup> Jane Harvey, *Australia's 150 Years of Dog Registration* (2017) <<https://janedogs.com/australias-150-years-of-dog-registration/>>.

retrieving and tracking.<sup>84</sup> These State and Territory associations are either incorporated associations or companies limited by guarantee, and each sets out slightly different objects in their constitutions. Essentially, they exist to represent, control and promote the activities of owners and breeders of pure breed dogs, the responsible breeding of pure breed dogs and the running of dog sports in each State and Territory.<sup>85</sup>

The ANKC was established in 1949 with the intention of providing advice to and promoting co-operation between the existing State canine authorities.<sup>86</sup> The ANKC operates under a constitution that currently sets out 33 objects around the promotion and improvement of dog sports, dog breeding and training, relating to breeds of dogs on the pure breed dog register. One of the objects is to legislate and make rules and regulations that are necessary to promote any or all of the other objects.<sup>87</sup> The ANKC 's role has expanded over time, and whilst it still plays a co-ordinating and recommendatory role, it has a number of defined roles including maintaining national dog breed standards and, more recently, national pure breed dog registration.<sup>88</sup> The ANKC was registered with the Australian Securities and Investment Commission (ASIC) as a company limited by guarantee under the name Australian National Kennel Council Limited in 2011.<sup>89</sup> As stated by the ANKC:

*There can be no doubt that the Australian National Kennel Council Limited has developed co-operation between the 8 Controlling Bodies and made a large contribution towards improving dog showing, breeding and other canine activities in Australia.*<sup>90</sup>

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<sup>84</sup> Dogs Victoria, *Get Involved* (2017) <<http://www.dogsvictoria.org.au/GetInvolved/Clubs.aspx>>.

<sup>85</sup> The term 'pure breed dog' has been defined in the Glossary at page xiii H R Spira (ed), *An Historical Record of Australian Kennel Controls* (Australian National Kennel Council 1988), 93.

<sup>86</sup> Ibid, 16.

<sup>87</sup> *Australian National Kennel Council Limited Constitution 2011*, Part 1, section 3.

<sup>88</sup> Australian National Kennel Council Limited, *History* (2011) <<http://www.ankc.org.au/History.aspx>>

<sup>89</sup> Ibid.

<sup>90</sup> Spira, above n 73, 16.

The ANKC collects and makes available statistical information on pure breed dog breeding in Australia, such as how many of each breed has been registered each year. It is also working towards a computerised data base to record and make available information on some aspects of canine health. It also has a research arm, the Canine Research Foundation that provides funds to support research into canine health.

#### *4.2 State and Territory Canine Association Breeding Codes*

The State and Territory canine associations through codes of ethics discourage their members from breeding for the commercial market. Some specifically state that the only purpose must be to improve the quality of the breed in line with the breed standard and that breeders should strive to eliminate hereditary diseases. Other codes state that breeders should breed to improve or maintain the health, welfare and soundness of their dogs. Details of the codes and the specific clauses are set out in Appendix 3. These are also considered in more details in Part VI of this Chapter.

#### *4.3 Breed Standards and Breed Clubs*

As mentioned above, both the ANKC and the 8 State and Territory canine associations promote the breeding and sporting events with pure breed dogs in Australia. They do so by using breed standards and breeding codes. Each pure breed dog breed in Australia has a *Breed Standard* that sets such things as size, colour, and shape characteristics for the breed. It is to this Breed Standard that each show dog is compared in the competitive world of conformation dog showing.<sup>91</sup>

Although not part of the regulatory framework as such, breed clubs, some at national level and others at State and Territory level have been formed to represent breeders of many breeds that exist in Australia.<sup>92</sup> These clubs promote breeding of dogs of the breed in accordance with breed

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<sup>91</sup> For example, the Extended Breed Standard for the Italian Greyhound, Australian National Kennel Council Limited, 'Extended Breed Standard of the Italian Greyhound ' (1994)  
<[http://ankc.org.au/media/pdf/635576244845629885\\_7ef8d65a-821d-4b67-8e74-93bb2400ed0a.pdf](http://ankc.org.au/media/pdf/635576244845629885_7ef8d65a-821d-4b67-8e74-93bb2400ed0a.pdf)>.

<sup>92</sup> There are currently 29 National Breed Clubs and over 360 State or Territory based breed clubs or associations, specifically dedicated to a particular breed. There are a number of breeds, such as the Chihuahua that is represented by more than 5 clubs. Other breeds, such as the Italian Greyhound have no specific breed club

standards. A number of these clubs also promote genetic testing, and the larger of them run breed rescue programs and other activities for members that promote awareness around the specific breed. An example of a national breed club that is actively involved with its members is the German Shepherd Dog Council of Australia that has been in existence for over 50 years and currently has 9 State or Territory member clubs over which it presides. This national breed club is active in providing breed specific health advice to its members.<sup>93</sup> Collin and others recognise that, should any of the genetic issues in pure breed dogs require changing breed standards and breeding practices, then there will clearly be a role for breed clubs to be involved in this process. For those breeds that are not represented by breed clubs, such management may be more difficult to achieve.<sup>94</sup>

## 5. Backyard and occasional breeders

The final type of breeder that is recognised in this thesis are those breeders that breed from time to time or accidentally and who then place the resulting puppies up for sale or for give away in one of the many ways possible. The breeders that are in this group may be the ones that may be harder to regulate, but the reality is that the puppies produced by this group of people in Australia does contribute significantly to dog population.

## 6. Motivations of Breeders

What motivates the various groups of breeders that have been identified in this thesis will be vastly different and as such their ability and willingness to comply with breeding regulation will be vastly different. Etienne confirms that as regulatees are free to pursue their own goals and

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representation. There are other clubs at State and Territory level that are devoted to a dog group such as gundog and working dog clubs. This research has focused on the clubs and associations committed to particular breeds. It was hoped that some of the national breed clubs would respond to an email request to be interviewed about the role and purpose of these clubs and associations. None of the clubs that were contacted ultimately agreed to participate in this research.

<sup>93</sup> German Shepherd Dog Council of Australia Inc., *Our Structure* (2017) <<http://www.gsdcouncilaustralia.org/structure/>>.

<sup>94</sup> L M Collins et al, 'Getting Priorities Straight: Risk Assessment and Decision-making in the Improvement of Inherited Disorders in Pedigree Dogs' (2011) 189(2) *Veterinary Journal* 14717, 151.

objectives it is important for regulatory actors to understand what motivates them and further to understand the impact of different regulatory measures on the behaviour of regulatees.<sup>95</sup> Braithwaite reports that regulation is more effective where regulators are able to understand what motivates regulatees and regulatory actors.<sup>96</sup> Where regulatees are motivated at least in part by the relationship they have with the regulatory actors then a responsive approach is more likely to succeed.<sup>97</sup> Black asserts that regulatory actors must understand that the motivations of regulatees can change over time and are influenced by their relationship with others including regulatory actors and other regulatees.<sup>98</sup>

It has been suggested that the community is generally unaware of what motivates hobby breeders and there is a feeling of unease with the notion that some people breed to enhance a dog's appearance rather than to produce a functional dog that can live suitably as a companion animal.<sup>99</sup> Some breeders produce puppies to make money. These are commercial breeders. Some breeders produce puppies to comply with a breed standard, to be able to show their dogs and to have success in other dog sports, such as agility and sheep herding.<sup>100</sup> These breeders are considered hobby breeders. There is no doubt that despite being hobby breeders these breeders can make money from breeding and selling puppies. Some other breeders produce puppies that will work on farms or as guide dogs and other service dogs. Some breeders will be open about the objectives and motivations behind their breeding and others may not.

Bennett and Perini confirm that there is low public tolerance of breeding practices where genetic manipulation is possible, without the assurance of ethical practices that give sufficient regard to

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<sup>95</sup> Julien Etienne, 'Compliance Theory: A Goal Framing Approach ' (2011) 33(3) *Law and Policy* 305, 309 and 327.

<sup>96</sup> John Braithwaite, 'Relational Republican Regulation' (2013) 7(1) *Regulation and Governance* 124, 136.

<sup>97</sup> Frederique Six, 'Trust in Regulatory Relations ' 15(2) *Public Management Review* 163, 167.

<sup>98</sup> Julia Black, 'Decentring Regulation: Understanding the Role of Regulation and Self-Regulation in a 'Post-Regulatory World'' (2001) 54 *Current Legal Problems* 103 , 109.

<sup>99</sup> Collins et al, above n 82, 147.

<sup>100</sup> Dogs Victoria, *Get Involved - Clubs* (2017) <<http://www.dogsvictoria.org.au/GetInvolved/Clubs.aspx>>

canine welfare.<sup>101</sup> Pedigree hobby dog breeders are often prepared to spend large amounts of money on breeding their dogs and sometimes such breeding practices include a commitment to enhance certain attributes in particular breeds. Breeders often have a strong commitment to their particular breed and to their individual dogs.<sup>102</sup> Collins and others consider the question about breeding objectives and ponder whether breeders do genuinely have an overarching breeder objective to breed long lived companionable dogs that retain the features of traditional merit that are valued in the show ring.<sup>103</sup> This view is supported by material produced by the ANKC, who assert that all serious breeders keep up to date with international events and information, including on diseases that are prevalent in their breed.<sup>104</sup> The research undertaken in this thesis seeks to extend research undertaken by Collins and others by examining the objectives and motivations of Australian breeders.

Registered pure breed dog breeders are required by industry codes to strictly adhere to breed standards that are current for their breed. Australian breed standards closely align with breed standards in the UK although there have been variations over the last 50 – 60 years. The ANKC recently reported on the need to establish a consistent national approach to how standards are used in Australia.<sup>105</sup> Dog breeds historically have been established in many different countries and so the country of origin may have a standard for the breed, as may other jurisdictions. In Australia there is a National Breed Standards Co-ordination Group with members from each State and Territory that overviews and manages the breed standards used by the ANKC.<sup>106</sup>

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<sup>101</sup> Edward Eadie, *Education for Animal Welfare* (Springer, 2011)3, v.

<sup>102</sup> P C Bennett and E Perini, 'Tail Docking in Dogs: Can Attitude Change Be Achieved?' (2003) 81(5) *Australian Veterinary Journal* 277, 279.

<sup>103</sup> Collins et al, above n 82, 152.

<sup>104</sup> Australian National Kennel Council Limited, *Improving Outcomes for Pedigree Dogs in Australia* (2015) <<http://ankc.org.au/HealthAndWelfare/?id=1100>>.

<sup>105</sup> ANKC Ltd, *Health and Well Being - Improving Outcomes for Pedigree Dogs in Australia* (2015) <<http://ankc.org.au/HealthAndWelfare/?id=1100>>

<sup>106</sup> Celeste Bryson, 'Pedigrees Have More Chance - It's Harder to Rehome Designer Dogs ', Dog News Australia (Hoxton Park), 2009.



Many of the stakeholders voicing concerns about the plight of pure breed dogs believe that these breed standards and breeders' strict adherence to them has caused problems for a number of breeds. An independent report undertaken in the UK in 2009 recognised the implications of traditional selective breeding practices in causing exaggerated anatomical features and inherited diseases in certain breeds of pure breed dogs.<sup>107</sup>

The veterinarian literature explains that in the earliest days, dog breeding was done in a way that enhanced breed utility and functionality. McGreevy and Nicholas examine current breeding decisions and conclude that some breeders do not make decisions around breed functionality. Instead, they focus their breeding efforts on a dog's morphology in pursuit of awards when showing their dogs in conformation dog shows.<sup>108</sup> An example is the breeding of the British Bulldog, where the breed standard in the UK at the time of the research by McGreevy and Nicholas called for a dog with a large head – '*the larger the better.*'<sup>109</sup> Researchers such as McGreevy and Nicholas would argue that this encourages breeders who wish to comply with the breed standard to pursue their hobby of dog showing and breeding to breed dogs with large skulls, resulting in dogs with dystocia (difficulties in birthing).

Currently the breed standard for the British Bulldog provides that the skull should be '*relatively large in circumference*'.<sup>110</sup> Asher and others believe that breeding of dogs primarily on the dog's morphology can be detrimental to dog health and that it does not promote the breeding of dogs that are temperamentally sound. Their study consisted of a review of the existing information on conformation related disorders in the top 50 UK Kennel Club registered breeds. They found that each of these top 50 breeds had at least one aspect of its conformation predisposing it to a

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<sup>107</sup> Nicola Rooney and David Sargan, 'Pedigree Dog Breeding in the UK: a Major Welfare Concern?' (2009) <http://www.rspca.org.uk/ImageLocator/LocateAsset?asset=document&assetId=1232712491490&mode=prd>.

<sup>108</sup> PD McGreevy and F W Nicholas, 'Some Practical Solutions to Welfare Problems in Dog Breeding ' (1999) 8 *Animal Welfare* 329, 330.

<sup>109</sup> *Ibid*, 330.

<sup>110</sup> The Kennel Club (UK), *Bulldog Breed Standard* (2010) <https://www.thekennelclub.org.uk/services/public/breed/standard.aspx?id=4084>.

disorder.<sup>111</sup> These studies imply that breeders are motivated by success in the show ring. That is, that to win in the competitive world of dog showing they breed in accordance with breed standards. What is not clear however is, what actually motivates recreational hobby pure breeders. From an examination of the ANKC webpage this industry body believes that their members breed to improve breed standards.<sup>112</sup>

What needs to be considered is what motivates breeders and if these motivations are conducive to ensuring that the dogs that they breed are behaviourally, genetically and temperamentally as healthy as they can be. Are dog sellers producing healthy long-lived companions? In relation to pure breed dog breeding, there is an opportunity to make change for the better. As identified by King et al:

*What is needed is some systematic attempt to promote the breeding of purebred dogs with the temperament and behavioural predispositions best suited to the role of the companion dog.*<sup>113</sup>

This research contributes to this by collecting data from both dog owners and dog breeders on what those that acquire dogs seek, what motivates breeders and around the importance both owners and breeders place on owning and breeding dogs with sound temperaments.

## 7. Motivations of Owners

Both dogs and dog owners come in many varieties. What motivates one dog owner to acquire their dog will be unique to that owner. All owners though are considered by the law to be acquirers of property and have access to the protection of the consumer law. In terms of the

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<sup>111</sup> L Asher et al, 'Inherited Defects in Pedigree Dogs. Part 1: Disorders related to Breed Standards' (2009) 182(3) *Veterinary Journal* 402, and Paul D McGreevy et al, 'Dog Behaviour Co-Varies with Height, Bodyweight and Skull Shape' (2013) 8(12) *PLOS One* .

<sup>112</sup> Dr Karen Hedberg – states that the aim of responsible breeding is to breed for breed soundness. This breed soundness comes from looking at a dog's physical, mental, genetic soundness and breed type. Dogs NSW, *Responsible Breeding - Dr Karen Hedberg* (2012) <<http://dogsnsw.org.au/breeding/responsible-breeding.html>>.

<sup>113</sup> T King, L C Marston and P C Bennett, 'Breeding Dogs for Beauty and Behaviour: Why Scientists Need to do more to Develop Valid and Reliable Behaviour Assessments for Dogs kept as Companions' (2012) 137(1-2) *Applied Animal Behaviour Science* 18, 5.

rights of consumers, the acquiring choices have a definite bearing on the extent of expected merchantability or fitness for purpose. A person who purchases a pure breed dog from a registered breeder and pays several thousand dollars is going to expect that the puppy has been bred in an appropriate manner; fed well and socialised so that the puppy has every chance of becoming a happy and healthy member of the family. A person who acquires an older dog from a rescue organisation where the organisation is unable to provide any details around the dog's age or history may well have lower expectations about the dog's temperament or long-term health.

There is literature from a number of jurisdictions, (including research done by Farrow and others in New Zealand, work by Garrison & Weiss and Ghirlanda and other in the United States, work by Sietto and others in the UK and Sandee and others in Denmark) that provides insight into what people want when they acquire a dog.<sup>114</sup> This literature identifies factors motivating the acquiring practices of individuals.<sup>115</sup> Consumer behaviour literature acknowledges that factors such as impulse purchasing, risk taking, curiosity induced purchasing, the desire for something novel, and seeking relief from boredom, can all impact on purchasers' motivations buying/acquiring choices.<sup>116</sup> It is impossible to consider all of these factors as coming from consumer behaviour literature, but they are recognised as added layers that might be worthwhile of deeper investigation outside this thesis.

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<sup>114</sup> T Farrow, AJ Keown and MJ Farnworth, 'An Exploration of Attitudes Towards Pedigree Dogs and their Disorders as Expressed by a Sample of Companion Animal Veterinarians in New Zealand' (2014) 65(5) *New Zealand Veterinary Journal* 267 and Laurie Garrison and Emily Weiss, 'What Do People Want? Factors People Consider When Acquiring Dogs, the Complexity of the Choices They Make, and Implications for Nonhuman Animal Relocation Programs' (2015) 18(1) *Journal of Applied Animal Welfare Science* 57 and , S Ghirlanda et al, 'Fashion vs. Function in Cultural Evolution: the Case of Dog Breed Popularity' (2013) 8(9) *PLOS One* and P Sandee and Kondrup, 'Why do People Buy Dogs with Potential Welfare Problems Related to Extreme Conformation and Inherited Disease? A Representative Study of Danish Owners of Foud Small Dog Breeds ' (2017) *PLOS One* 1

<sup>115</sup> Hans Baumgartner and Jane-Bendict E M Steenkamp, 'Exploratory Consumer Buying Behavior: Conceptualization and Measurement ' (1995) 13(1996) *International Journal of Research in Marketing* 121, 123.

<sup>116</sup> Ibid, 123.

What this research does though is considers the literature that looks at what pet acquisition choices. Research on what motivates owners to acquire the type of pet that they have dates back over 30 years. In 1981 Fox presented his work at a Symposium on the Human Companion Animal Bond. His research into the motivations behind pet ownership found 4 categories or types of relationships. These have been summarised by Dotson and Hyatt in their work in 2008 as:

*Object-orientated (with the dog being a possession); utilitarian-exploitative (with the dog providing benefits to the human); need-dependency (with the dog as a true companion); and actualising (with the dog as a respected significant other).*<sup>117</sup>

Since this time there has been growing animal welfare, consumer and psychology research that examines pet ownership in terms of the buying and consumption choices being made by owners.

A recent study by Sandee and others examines what motivates buying choices in light of the fact that breeds such as French Bulldogs and Chihuahuas remain popular despite these breeds having a higher than average incidence of health and behavioural issues. The Sandee study concludes that a dog's personality and the closeness that the owner feels to their dog, through its personality were highly motivating factors.<sup>118</sup> What emerges is that some people purchase dogs, not just for their function or companionship but for other personal reasons.

Ghirlanda and others consider how and why owners choose the type of pet that they do, why they spend the amounts they do on their pets and what makes a breed popular for one generation and not so popular for the next. Their findings suggest that breed popularity is not influenced by such things as breed health or longevity and in fact, despite having significant health issues, some of the breeds most affected continue to be increasingly popular.<sup>119</sup> Morris

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<sup>117</sup> Michael J Dotson and Eva M Hyatt, 'Understanding Dog–Human Companionship' (2008) 61(5) *Journal of Business Research* 457, 457. There is literature that expands on the reasons why humans own dogs, this suggests that, whilst most dog owners own their dogs for the companionship a dog brings, others exhibit more consumption behaviour, purchasing a dog not primarily for companionship but for the status, distinction or for the social exchanges that such social facilitators provide. Beverland, Farrelly and Lim, above n 61.

<sup>118</sup> Sandee and Kondrup, above n 102.

<sup>119</sup> Ghirlanda et al, above n 102.

and Woodside examine the economic value, hedonic and social value of companion animals.<sup>120</sup> Some other literature explores the darker aspects to pet ownership, that is, that some owners purchase a pet, not significantly for the value it brings as a companion, but because of the perceived status a certain 'brand' or type of dog or other pet may bring.<sup>121</sup>

The business research literature acknowledges that, despite the debatable legal status of pets as possessions many people are willing to continue to acquire, maintain and expend vast amounts of money on them.<sup>122</sup> Bettany and Daly report on the utilisation of pedigree show dogs. They explore the notion that show dogs can be considered by their owners to be pets but also collectables, things that require the expenditure of significant amounts of money and that necessitate the entering into of '*highly significant relationships with other people*'.<sup>123</sup>

There may be many reasons why owners buy the type of dogs that they do and many factors that they might consider in making their acquisition choices. It is important that dog breeders, canine associations and policy makers understand what motivates dog buyers. This is a focus of this research and the results are set out in Chapter 9.

## PART VIII. THESIS STRUCTURE

This thesis contains another 10 chapters. Chapter 2 provides an overview of the regulatory framework that has been provided in this introductory Chapter. This is done in the context of the realities of the industry and those that operate within it as set out in Part VII of this Chapter. Chapter 3 provides a critique of the deficiencies in the current regulatory framework and

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<sup>120</sup> Morris B Holbrook and Arch G Woodside, 'Animal Companions, Consumption Experiences, and the Marketing of Pets: Transcending Boundaries in the Animal - Human Distinction' (2008) 61 *Journal of Business Research* 377 , 380.

<sup>121</sup> Beverland, Farrelly and Lim, above n 61, 43.

<sup>122</sup> Holbrook and Woodside, above n 104.

<sup>123</sup> Shona Bettany and Rory Daly, 'Figuring Companion-species Consumption: A Multi-site Ethnography of the Post-canine Afghan Hound' (2008) 61(5) *Journal of Business Research* 408, 409.

identifies issues in dog breeding that have been classified into four groups depending on the type of issue and the stakeholders affected by them. These four groups are:

1. regulatory issues;
2. consumer issues;
3. canine health and welfare issues; and
4. stakeholder issues

This research recognises that a number of these issues are interrelated, and that regulation plays a role in addressing some and not others. Chapter 4 considers the regulatory theory literature which provides appropriate methods to evaluate aspects of the regulatory framework in light of the deficiencies identified in Chapter 3. Chapter 5 sets out the methodology and methods used in this study. Chapters 6 to 9 outline the research findings as components of the central research question and discusses those findings. Chapter 10 outlines the framework for change. Chapter 11 sets out the contributions made by this research, evaluates the research methods adopted, and notes its limitations and scope for further research.

## CHAPTER 2: CURRENT REGULATORY FRAMEWORK

### PART I. INTRODUCTION

The central research theme of this thesis is not dog rights, dog welfare, dog advocacy or dog discourse although a consideration of the literature on those areas is useful and takes place in Chapter 3 as is necessary to support the aims of this research. This research centres on the establishment through regulation of humane responsibilities for dogs and puppies by those who breed them. Central to this research is an examination of the role and effectiveness of laws and other regulatory instruments in establishing a regulatory environment where those who breed dogs are responsible for ensuring that the dogs they own, and breed are provided with appropriate levels of care, and that the dogs they produce are physically, temperamentally and genetically sound, and sold to homes that are suitable and supported.

This Chapter provides an overview of the regulation that exists in Australia around dogs in general, and in breeding more specifically, at federal, State, local council and industry level.<sup>1</sup> As noted by Huss, a large component of this regulatory framework regulates humans and imposes on them responsibilities in relation to how they interact with and treat dogs.<sup>2</sup> In this research this part of the regulatory framework is termed 'dog law'. The summary of dog law provided is not intended to be an exhaustive or comprehensive consideration of all laws and regulations that may impact on the lives of dogs in Australia. Instead its role is to provide a context for the consideration in this research of the current regulation of dog breeding in Australia. Figure 1 in Chapter 1 provides a schematic representation of the current regulatory framework. This diagram includes tort law and within that negligence law as a part of the Australian legal system that impacts upon dog owners and dog breeders. This research does not include a substantial consideration of tort law, specifically negligence and the duty of care owed by manufacturers of goods and dangerous property. These laws are acknowledged as being relevant but given that no

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<sup>1</sup> This research has attempted to capture the state of the regulatory framework as it exists at the date of submission.

<sup>2</sup> Rebecca J Huss, 'The Pervasive Nature of Animal Law: How the Law Impacts the Lives of People and their Animal Companions' (2009) 43(3) *Valparaiso University Law Review* 1131, 1132.

case law was found during the case law analysis, a decision was made to provide an overview only an overview of this law. This is set out in Part IV of Chapter 2, together with a consideration of the regulation of dangerous dogs and specific breed legislation.

Part II of this Chapter provides an overview of the laws and regulations that allow dogs to be owned, controlled and exchanged. These laws and regulations make it clear that those that breed dogs can own dogs and use their dogs as breeding stock and can sell offspring produced by them. Part III considers the laws and regulations that provide protection for the community from any potential harm or negative impact that dogs can cause within the community. These regulations impose obligations on owners to control and manage their dogs and allows local councils to subordinate the rights of ownership, as necessary to protect the public.<sup>3</sup> Part IV considers those laws and regulations that focus on the rights and welfare of dogs, chiefly through State legislation providing for minimum standards of care for companion animals. Finally, Part V examines those rules and regulations that are set out in codes and regulations maintained by State governments and national, State and Territory canine bodies promoting and overseeing the breeding and ownership of pure breed dogs in Australia.<sup>4</sup>

A case law analysis was undertaken to collect together Australian case law from the period 1959 to 2015.<sup>5</sup> The process that was undertaken in relation to this case law analysis is detailed in Appendix 1. The aim of this case law analysis was to consider the extent to which the Australian judicial system provides a means by which dog buyers and others can seek legal redress in the context of dog breeding in Australia. Through a number of connected case law searches over a two-year period a total of 600 cases were examined. This case law analysis is not an exhaustive

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<sup>3</sup> *Isbester v Knox City Council* (2015) 20, paragraph 30.

<sup>4</sup> It is acknowledged that not all law that impact upon dogs and their owners fall within these four components. Laws that relate to feral dogs (such as the State and Territory legislation, for example *Land Protection (Pests and Stock Route Management) Act 2002* (Qld), greyhound racing; (such as the State and Territory legislation for example *Greyhound Racing Act 2009* (NSW), *Racing Act 2002* (Qld)) and the use of dogs in hunting as set out in legislation such as the *Wildlife Act 1975* (Vic) are specifically excluded from examination.

<sup>5</sup> 1959 represented the earliest case found in any of the searches and the analysis included all cases found at its conclusion in 2015.



summation and critique of all the cases considering dogs, dog welfare, the rights of owners or their obligations in relation to dogs. The intention was to capture cases concerning commercial and hobby dog breeding and consumer and contractual rights when it comes to dogs with defects. It is these cases that will be considered in the most detail in this commentary.<sup>6</sup> Some of the cases that have been found in this case law analysis are referred to several times, as they are relevant to various aspects of dog law.

## PART II. DOG OWNERSHIP

### 1. Dogs as Property

#### 1.1 Introduction

The law in Australia recognises that a dog is a commodity that can be bought and sold. As such, it is personal property that belongs to its owner.<sup>7</sup> The Australian approach stems from English case law that has viewed animals as property since the beginning of the common law itself and before in Ancient Roman law going back two thousand years.<sup>8</sup> As dogs are moveable in the sense that the owner can move them from one location to another, the law of personal property provides dog owners with the same rights over their animals as they have over other property that can be moved, such as furniture and household goods. Personal property is protected and controlled in a number of ways in Australia.

What follows is an analysis of the commentary in the cases concerning: dogs as property; where contract law has been pleaded or used to make breeders accountable for sick or defective puppies; and consumer law, where dogs are considered as '*products*'. It is recognised that tort law also provides owners with rights and imposes obligations on them and on dog breeders. No cases were found that relate to tort law, so the concept of tort law and the duty that those who

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<sup>6</sup> See also Darren Calley, 'Developing a Common Law of Animal Welfare: Offences Against Animals and Offences Against Persons Compared' (2011) 55(5) *Crime, Law & Social Change* 421.

<sup>7</sup> Steven White, 'Companion Animals: Members of the Family or Legally Discarded Objects?' (2009) 32(3) *University of New South Wales Law Journal* 8523, 853.

<sup>8</sup> Harriet Ritvo, *The Animal Estate* (Harvard University Press, 1987); *ibid*, 3 and Deborah Cao, *Animal Law in Australasia* (Thomson Reuters, 2nd ed, 2015), 70.

produce goods owe to those who purchase those goods is not expanded upon in this regulatory overview chapter.

## 1.2 Dogs as Property

Emerging from the case law analysis is the interesting point that some judges and tribunal members recognise the emotions behind dog ownership and the fact that the way that the law classifies a dog as property can be an issue. The majority of the High Court confirmed in the case *Isbester v Knox City Council* (2015) HCA 20 that an interest in a dog is a right in property, but also acknowledged that for many an interest in a dog is as a domestic pet, and as such any decisions being made by a council to subordinate an owner's rights to the public interest must be done in accordance with natural justice.<sup>9</sup>

The first of the cases illustrates that the emotional aspects to buying can be relevant considerations is *Knowles v Atkinson (General)* [2002] NSWCTTT 224.<sup>10</sup> The Respondent, who had sold a sick puppy to the Applicants, told them to put the puppy down. The Applicants refused to put 'Leo' down because they knew that 'he' was not sick enough. In finding for the Applicants, the Consumer Trader and Tenancy Tribunal of New South Wales found that the Respondents had acted in the best interests of the puppy in the action they took to care for him.

In *Lee v Zalac* [2003] NSWCTT 362,<sup>11</sup> the Consumer Trader and Tenancy Tribunal of New South Wales held that the purchaser of a pure breed puppy was misled and deceived about the genetic soundness of the ancestors of the puppy. The breeder was found to be in breach of the breeding code of ethics that operated in NSW at the time. The Tribunal noted it was difficult to use consumer law to provide an adequate remedy when the Applicant had no desire to return the damaged goods, but was seeking to both retain the goods and seek a monetary claim.<sup>12</sup> This

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<sup>9</sup> *Isbester v Knox City Council* (2015) 20, paragraph 30.

<sup>10</sup> *Knowles v Atkinson* [2002] NSWCTT 224.

<sup>11</sup> *Lee v Zalac* [2003] NSWCTT 362.

<sup>12</sup> *Lee v Zalac* [2003] NSWCTT 362 at paragraph 12. The Royal NSW Canine Council's Code of Ethics adopted 6/95 Amended February 2000 (Exhibit A13) states: "3A Members, who are breeders, shall strive to eliminate hereditary

demonstrates the reality that those who purchase a defective puppy (in this case one with entropion, a common hereditary disorder in dogs where the eyelid rolls inward) do seek to hold a breeder accountable for breeding dogs with known genetic disorders, but they wish to do so without having to return the dog, clearly because of the attachment that develops.

In *Jones v Planhaven Kennels (General)* [2009] NSWCTTT 566 the Consumer Trader and Tenancy Tribunal of New South Wales acknowledged that the terminology used in consumer claims does not sit well when what has been purchased is a companion animal. Nevertheless, the Tribunal noted that consumer claims relating to companion animals are treated no differently by the law from those relating to a refrigerator or television.<sup>13</sup>

Two other cases that touch on the human-animal bond relate to disputes about ownership following breakdown of human relationships. In dispute in *Atkins v Cooper* [2008] NSWSC 1077<sup>14</sup> was possession of a prize dog that was highly valued and, from the evidence, high in the affections of both parties. The decision made was to return the dog to the Plaintiff with whom the dog had lived for over 4 years. The Supreme Court of New South Wales decided it was fair to use a test of convenience when deciding with whom the dog should reside. In *Ackland v Watt (Civil Claims)* [2010] VCAT 1629,<sup>15</sup> the Victorian Civil and Administrative Tribunal confirmed that the owner of the dog, having done everything they could to care for the dog that the partnership had entrusted to them had '*earned the right of ownership of the dog*'. The Tribunal recognised that the dog, Elvis, was a pet and a valued member of the family and that '*the hobby Elvis shares with Michelle in the show ring is an added bonus*'. The Tribunal determined that, given the partnership to co-own and show the dog broke down in a way that was not contemplated, it was

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diseases within their breed 10/95. Special Requirements provide that breeders will take responsible action to reduce the incidence of hereditary diseases.

<sup>13</sup> *Jones v Planhaven Kennels (General)* [2009] NSWCTT 566.

<sup>14</sup> *Atkins v Cooper* [2008] NSWSC 1077.

<sup>15</sup> *Ackland v Watt* [2010] VCAT 1629.

up to the Tribunal to decide on the basis of what it considered fair, having regard to the best interests of the dog.

The two cases above can be contrasted to the four cases that were found from the Federal Court's Family Law jurisdiction where the dogs that were recognised in those cases were considered strictly as property of the marriage and orders were made in relation to transfer of this property. For example, in the case of *George & Perkins* [2012] FamCA346, orders were made, in much the same as a Family Court may order the transfer of a motor vehicle:

*40. Within 14 days of the date of this Order the wife shall do all such acts and sign all such documents as may be necessary to transfer to the husband the Pedigree Dog Breed 1 and Dog Breed 2 dogs known as "H" (kennel name "..."), "J" (kennel name ...), "K" (kennel name ...) and L (kennel name ...) such documents to include:*

- a. Microchip registration;*
- b. Ownership of Dogs/Pedigree Papers;*
- c. Any export and veterinary documents.*

*41. The husband transfers to the wife all his right title and interest in the two Dog Breed 3 dogs known as "Z" and "N" currently registered in the wife's name.<sup>16</sup>*

In *Scardoni & Davis (Civil Dispute)* [2013] ACAT 35,<sup>17</sup> the Australian Capital Territory Civil and Administrative Tribunal noted, before considering the legal issues, that the events in the case had an emotional impact on the lives of both parties. This case dealt with the sale of a Beagle puppy named Tomi, who died from parvovirus contracted whilst in the care of the Respondent, its breeder. The evidence from the Applicant was that she treated all her dogs as part of her family and that Tomi was special to her and her family. She gave evidence that his illness and death caused her and her family a lot of emotional stress and grief. The Respondent breeder also told the Tribunal that she had been very distressed as Tomi was one of the puppies she produced, and she was attached to him.

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<sup>16</sup> *George & Perkins* [2012] FamCA 346, paragraph 40 & 41.

<sup>17</sup> *Scardoni v Davis* [2013] ACAT 35 – comments made at paragraph 12 by Presidential Member Ms E. Symons.

Authors such as Bogdanoski note that the continuing legal status of companion animals; as property belonging to their owners, allows them to be viewed as disposable household commodities.<sup>18</sup> The cases examined above, where a breeder has been ordered to compensate a buyer who has purchased a puppy with defects, demonstrate that, within this definition of a dog as a good, comes an awareness that this good is required to be healthy and well-bred. They do not however directly challenge the property status of dogs. They are instructional however as they show how the courts acknowledge the emotional aspect of ownership of property that is alive.

*[The Applicant] treated her animals as part of her family. She said Tomi was special to her and, like her previous dogs, she treated him as part of her family. The situation with Tomi had caused her and her family a lot of emotional stress and grief. In her email to the Respondents dated 31 December 2012 she wrote "this has been so devastating."<sup>19</sup>*

This recognition of the emotional issues involved with owning a sick puppy is a positive sign, and if used in conjunction with welfare laws will not only raise breeder awareness of the need to breed dogs that are physically, genetically and temperamentally sound, but it may also be instructive to other courts and lawmakers that society's views of the status of animals is changing and laws should be changed to reflect this.

## 2. Contract Law

### 2.1 Introduction

In Australia, contracts entered into by parties are protected by a set of rules and principles set out in the common law. If the parties enter into an agreement that contains enough of the necessary elements for the law to determine that it is a contract rather than a mere hope or expectation, then the courts will give effect to the intentions of the parties.<sup>20</sup> Not only will the courts enforce formal contracts, but in some cases they will give effect to the reasonable

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<sup>18</sup> Tony Bogdanoski, 'A Companion Animal's Worth: The Only 'Family Member' Still Regarded as Legal Property' in Peter Sankoff, Steven White and Celeste Black (eds), *Animal Law in Australasia* (The Federation Press, 2013) 84, 84.

<sup>19</sup> *Scardoni v Davis* [2013] ACAT 35, at paragraph 13.

<sup>20</sup> Andy Gibson and Douglas Fraser, *Business Law* (Pearson, 6th ed, 2012), 301.

expectations of the parties, particularly when a promise is made by one party and, because of the special relationship between the parties, the other party irreversibly changes their position. The courts have held that in some circumstances it would be unconscionable not to keep the first party to their promise.<sup>21</sup> This area of contract law is known as estoppel.

Most contracts can be enforced if they are evidenced either in writing or orally and their terms can be determined by the courts objectively, considering both the words and actions of the parties and the texts of any documents. The courts will also consider the surrounding circumstances known to the parties and the purpose of the transaction between them.<sup>22</sup>

## 2.2 Contract Law

From the analysis of cases from 1959 to 2015, 5 cases were found where breach of contract was either pleaded or considered as a potential cause of action between a puppy buyer and seller. It is acknowledged at the outset of this commentary that the law is not always able to provide an appropriate solution or remedy when it comes to a defective puppy and sometimes the outcome is that the puppy dies after one or both of the parties have spent money on veterinary care. These 5 cases come from matters heard by consumer, civil and administrative tribunals in 3 States and Territories.

In *Knowles v Atkinson* [2002] NSWCTT 224,<sup>23</sup> the Consumer Trader and Tenancy Tribunal of New South Wales, using its jurisdiction under the *Consumer Claims Act 1998* (NSW) and the *Consumer Trader and Tenancy Tribunal Act 2001* (NSW), found in favour of the Applicants, the purchasers of a sick puppy. The Respondent was a breeder of Golden Retriever dogs and in the course of this business she sold a dog to the Applicants for the sum of \$850. The Tribunal found that the Respondent made a contractual promise that the dog's health was guaranteed. The Tribunal found that the dog suffered seriously disturbing symptoms almost immediately and these

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<sup>21</sup> Roger Brownsword, 'Maps, Methodologies, and Critiques: Confessions of a Contract Lawyer' in Mark Van Hoecke (ed), *Methodologies of Legal Research* (Hart Publishing Ltd, 2011) .

<sup>22</sup> *Pacific Carriers Ltd v BNP Paribas* (2004) 218 CLR 451.

<sup>23</sup> *Knowles v Atkinson* [2002] NSWCTT 224.

continued intermittently over the month that the puppy was with the Applicants. The Tribunal found that the Applicants did all that was in their power to deal with the problem and mitigate any loss. In the circumstances, and following the advice of their veterinarian, the Applicants took the reasonable action of returning the dog to the breeder. The Applicants did not seek any compensation for veterinary or other costs incurred. They were awarded a refund for the purchase price of the puppy. The key finding in this case was that the Applicants were able to rely on the guarantee made by the breeder in relation to the health of the puppy, and it was viewed by the tribunal to be a general promise to take back the puppy and provide a refund in the case of serious ill health.

In contrast, in *Jones v Planhaven Kennels (General)* [2009] NSWCTTT 566, the Consumer Trader and Tenancy Tribunal of New South Wales found in favour of the Respondent breeder in the substantial part of the claim as the major defect suffered by the sick puppy could not be said to have existed at the time of sale.<sup>24</sup> In this case the Tribunal found that there was no contractual term or 'guarantee' in relation to the health of the puppy on purchase. The Respondent did not give a 'health guarantee' or 'warranty' and the Applicant did not ask for one at the time of purchase. However, given the existence of the *Fair Trading Act (1987)* (NSW) there was an implied term in all consumer contracts that the product is free from 'defect' and 'fit for the purpose'. In this case the Tribunal did find that the puppy had a defect, as she had coccidiosis and given the incubation period for this disease the puppy must have had it at the time she was sold to the Applicants. Ultimately however the Applicants were unsuccessful in relation to the major part of their claim, which was to a claim of \$3541 to cover the costs that they incurred to treat a condition known as eosinophilic enteritis. The Tribunal was unable to find on the evidence that the condition was present at the time of sale as the expert evidence was that the condition can be caused by a number of factors.

In *Scardoni & Davis (Civil Dispute)* [2013] ACAT 35,<sup>25</sup> the Applicant lodged a debt application. The Australian Capital Territory Civil and Administrative Tribunal confirmed that the Applicant was

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<sup>24</sup> *Jones v Planhaven Kennels (General)* [2009] NSWCTT 566.

<sup>25</sup> *Scardoni v Davis* [2013] ACAT 35.

seeking payment of damages from the Respondents for breach of a contract relating to the sale of a Beagle puppy. Essentially the Applicant's claim was for breach of contract in that the puppy purchased had parvovirus when sold. The Applicant sought veterinary advice and acted on that advice. The Applicant did not accept the Respondents' opinion when they suggested that the puppy should be put to sleep, as she wanted to give the puppy a chance to survive. The Applicant brought an action on the basis that the Respondents breached a fundamental term of the contract by not supplying her with a healthy puppy. The Applicant sought veterinary treatment in the hope that it would make the puppy better. This treatment cost her \$2000. Had the puppy been healthy when sold to her, she would not have had to incur this expense. The Applicant did not regard the offer by the Respondents to pay \$700 as bringing the contract to an end. The Tribunal found that the puppy had contracted parvovirus while in the Respondents' care, and on this basis found that the Respondents breached the contract to sell a healthy beagle puppy to the Applicant.

In considering damages in *Scardoni & Davis (Civil Dispute)* [2013] ACAT 35, the Tribunal determined that on the information available to the Respondent when the contract was made, they should have realised that such loss was sufficiently likely to result from the breach of contract. On this basis, the Tribunal confirmed it was proper to hold that the loss flowed naturally from the breach or that loss of that kind should have been within the Respondent's contemplation. The Tribunal considered precedent case law and confirmed that an innocent party is entitled to recover damages caused by virtue of the breach of contract subject to the test of remoteness. The Tribunal found that the loss must be one which was '*not unlikely*' or was '*liable*' to result. The Tribunal found it relevant that the Respondents were dog breeders, who, given their experience, should have reasonably supposed that if they failed to provide a healthy puppy the purchaser would be exposed to veterinary costs. The Tribunal was satisfied that the test of remoteness to claim these damages had been satisfied. This case is interesting in that the buyer did not need to rely on the implied terms provided by consumer law but was successful in suing using breach of a fundamental term in the sale contract. Here, the Tribunal made an order therefore to provide the Applicant with not just money to provide a replacement but also the 'repair' costs, despite the fact that in reality the breeder could have replaced the puppy with



another. This is instructional, that at least some courts do consider companion animals to be unique and that they cannot be simply replaced.

*Maslij v Attard trading as Chevronmist (Civil Claims)* [2014] VCAT 719<sup>26</sup> was another sick puppy case this time brought before the Victorian Civil and Administrative Tribunal. This case involved the purchase of an eight-week-old Japanese Spitz puppy. At the time of purchase, the Applicants received a health guarantee from the Respondents that the puppy would be free from distemper, parvovirus or hepatitis for 72 hours. There was evidence that shortly after purchase the Applicants exposed the puppy to two adult dogs that were not immunised. The puppy became sick within 72 hours of being purchased and spent a number of days under veterinarian care where it died. The Tribunal determined that it was general knowledge that such a young puppy should not have been exposed to other dogs until it had received its second vaccination. Evidence emerged that the Applicants had been advised of this, perhaps orally, when they collected the puppy but definitely in writing on page 22 of the information document provided to them when they purchased the puppy. The Tribunal found that the health guarantee that the Respondents provided when they sold the puppy was contractual in nature, but that the Applicants had not brought themselves within the terms of it as they brought the puppy into contact with adult dogs before he was vaccinated the second time. The onus of proof was on the Applicants who claimed that the puppy was sick prior to meeting the 2 adult unimmunised dogs but they could not provide evidence to confirm this.

During the puppy's time under veterinarian care, emails were exchanged between the Applicants and the Respondents in which the Respondents agreed to refund purchase price and veterinarian fees to that point in time if the puppy was transferred back to them and released into the care of their veterinarian. The Respondents paid these funds to the Applicants, but the puppy was not transferred back to the Respondents nor released into the care of their veterinarian. The Applicants claimed damages of \$8000 made up of veterinarian fees, wasted expenses and stress. They sought to rely on a health guarantee expressly provided in the contract for sale. The Respondents sued the Applicants for the \$2636 they had paid to the

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<sup>26</sup> *Maslij v Attard trading as Chevronmist* [2014] VCAT 719.

Applicants. The evidence about when the puppy contracted parvovirus was unclear, so the Tribunal was not satisfied that the health of the dog at the time of the sale was poor. The Tribunal made no finding that there was a contractual breach of the health guarantee. Given that the Applicants did not return the puppy, the Tribunal dismissed the Applicant's proceedings and ordered them to pay the Respondents the sum of \$2636. The major issue in this case was that the Applicants had the burden of proving on the balance of probabilities that the puppy had parvovirus when it was purchased, and they could not meet this burden.

In the final case where breach of a contractual term was either pleaded or considered, *Gardner v James (Civil Claims)* [2015] VCAT 169,<sup>27</sup> the Victorian Civil and Administrative Tribunal found that a contract was formed on the 7 April 2014 between the Applicant purchaser and the Respondent seller. The Applicant and her daughter had identified the puppy they wanted to purchase at the Respondent's establishment. A price of \$1700 was agreed and the Applicant was informed by the Respondent that the puppy was the runt of the litter. The Applicant informed the Respondent that she wanted the puppy as a family dog. There was a dispute in relation to evidence around the Applicant claiming she also said she might want to breed from the dog. The puppy did not grow normally and was examined a number of times by veterinarians, who diagnosed a brain disorder. On this basis the Applicant claimed a refund of purchase price and veterinarian expenses. The Respondent offered to take the dog back and refund most of the purchase price. The Applicant declined this offer.

Without considering the consumer law aspects to this case here, it was found that the Applicant's decision to keep the dog despite its medical issues extinguished her right to claim for return of the contract sum. The Tribunal therefore dismissed the Applicant's claim. It is interesting to consider why the court granted no relief as it had open to it the awarding of a monetary amount representing the difference between the value of a dog, such as this with a brain disorder and a dog of the breed, without such defect.

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<sup>27</sup> *Gardner v James* [2015] VCAT 169.

This case, where no ‘repair’ costs were awarded can be contrasted to the case of *Scardoni & Davis (Civil Dispute)* [2013] ACAT 35, which is considered above where such costs were awarded.<sup>28</sup>

### 3. Consumer Law

#### 3.1 Introduction

The *Competition and Consumer Act 2010* (Cth)<sup>29</sup> is national legislation that promotes competition and fair trading in the provision of goods and services. It also contains consumer protection provisions.<sup>30</sup> It applies in all States and Territories in Australia and applies to all businesses. Schedule 2 of the *Competition and Consumer Act 2010* (Cth) sets out the major rights provided to consumers and is known as the Australian Consumer Law (ACL). Part 3 -2, Subdivision A imposes a number of guarantees relating to the supply of goods.

The case of *Gardner v James (Civil Claims)* [2015] VCAT 169, which has been referred to above, provides a good introduction to the guarantees that are typically raised in cases about a defective or sick puppy. In this case the Victorian Civil and Administrative Tribunal raised with the parties four possible relevant guarantees arising under the Australian Consumer Law, namely:

- 1) a guarantee as to acceptable quality (section 54);
- 2) a guarantee as to the fitness for a disclosed purpose (section 55);
- 3) a guarantee that the goods will correspond with their description (section 56); and
- 4) a guarantee to comply with any express warranty (section 59).<sup>31</sup>

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<sup>28</sup> *Scardoni v Davis* [2013] ACAT 35, paragraph 123.

<sup>29</sup> *Competition and Consumer Act 2010* (Cth) s 2.

<sup>30</sup> Part 3 – 2 sets out nine guarantees that can be implied into consumer transactions

<sup>31</sup> *Gardner v James* [2015] VCAT 169 at paragraph 17.

The obligations imposed by the ACL are substantially the same as those under the earlier federal legislation, the *Trade Practices Act 1974* (Cth) (TPA),<sup>32</sup> so cases considering the rights of companion dog buyers under the TPA will still be relevant under the ACL. Prior to the enactment of the ACL, each State and Territory also had its own *Sales of Goods Act* and fair-trading legislation.<sup>33</sup> The legislation that existed in New South Wales was the *Sale of Goods Act 1923* (NSW). This Act contained Part 2 that dealt with Formation of Contract matters. Of interest to this research are ss16 – 20 that provided implied terms in all consumer contracts. S 17 provided an implied term that the seller was warranting he/she had the right to sell the goods. Section 18 dealt with sale by description, that is, should a seller sell a good using a description he or she is warranting that the goods will match that description. S19, which is similar to s55 in the ALC, implied into all consumer sales that the goods would be of a certain quality or fitness:

*19 Implied condition as to quality or fitness*

*Subject to the provisions of this Act, and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:*

*(1) Where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether the seller be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose:*

*Provided that in the case of a contract for the sale of a specified article under its patent or other trade name there is no implied condition as to its fitness for any particular purpose.*

*(2) Where goods are bought by description from a seller who deals in goods of that description (whether the seller be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality:*

*Provided that if the buyer has examined the goods there shall be no implied condition as regards defects which such examination ought to have revealed.*

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<sup>32</sup> *Trade Practices Act 1974* (Cth).

<sup>33</sup> The legislation that was considered in the case law analysis *Consumer Claims Act 1998* (NSW), *Consumer, Trader and Tenancy Tribunal Act 2001* (NSW), *Trade Practices Act 1974* (Cth); *Sale of Goods Act 1923* (NSW), *Fair Trading Act 1987* (NSW), *Australian Consumer Law* (WA), *ACT Civil and Administrative Tribunal Act 2008* (ACT), *Australian Consumer Law* (Vic).

*(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.*

*(4) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.<sup>34</sup>*

Through the following case law analysis, the relevant sections in the ACL and the various State and Territory sales of goods legislation will be considered. Given that a dog is viewed as a good, those who sell dogs commercially must comply with all provisions in the ACL. These require sellers to sell goods that are durable, free from defects, fit for purpose, acceptable in appearance, that match their description and that match any sample or demonstration model. The implication of this for dog sellers is that all dogs sold should be robust and free from defects and should survive for a reasonable time after purchase. The seller must ensure that, if a dog buyer has indicated a particular purpose for which they wish to buy a dog, then the dog should be fit for that purpose. This means that, if a breeder is aware that a dog that he or she is selling has a defect such as a genetic health issue that may result in the dog suffering health issues later in life, this should be disclosed to the buyer. Some cases that consider what these obligations mean for puppy sellers are examined below.

One point of confusion for puppy buyers is that they may believe that buying a puppy from a breeder registered with the Australian National Kennel Club Ltd (ANKC) means that the puppy is health and temperament tested. The ANKC is a registry body, and it does not sell or breed dogs itself. A regulation certificate from it only identifies the dog as the offspring of a known sire and dam. The ANKC provides no further assurances of quality, even though consumers may think that buying a registered dog provides some guarantee that it is in good health.<sup>35</sup>

Any description that is given about the dog; on a website or in advertising material; must be accurate. The ACL imposes obligations on all businesses not to make false, misleading or deceptive claims about a product or service and prohibits the use of unconscionable conduct in

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<sup>34</sup> *Sale of Goods Act 1923 (NSW)*, s19.

<sup>35</sup> Lloyd D Cohen and Debra S Hart-Cohen, 'Show Dogs and Breeding' (2009) 26(5) *GP Solo* 26. No cases were found that considered this aspect of the ALC or the points raised by the Cohen's article.

trade. This means that dog sellers must not mislead companion dog buyers about the characteristics of the dogs that they are selling and must not use conduct that is unfair to induce buyers to acquire their dogs. What this means needs to be determined by analysing the case law.

### 3.2 Consumer Law – case law analysis

As has been set out above the Australian Consumer Law provides a set of guarantees around the quality of goods purchased from businesses in Australia. The case law analysis found 15 relevant cases that considered consumer law and the guarantees provided by it. Ten of these cases were cases where it was the purchaser of a defective or sick puppy or dog that initiated proceedings using either the ACL or State or Territory consumer legislation, in an attempt to recover purchase money and/or veterinarian costs against a breeder. Five cases were cases where the Consumer for Consumer Protection used legislation to stop a breeder from advertising and selling sick puppies.

The 15 cases that were found have been placed into three groups as follows:

- 1) Six cases when the breeder was found to be accountable for a defect in a puppy
- 2) Two cases where the breeder was found not to be accountable for the defect
- 3) Seven cases where the court specifically determined that liability was contingent on when puppy acquired the illness that amounts to a defect.

#### 3.2.1 Group 1 – Breeder Accountable for Defect

In six of the cases the breeder in question was found liable for selling a sick or defective puppy and ordered (amongst other things) to compensate the buyer. The first of these cases was *Dodge v Rockey (General)* [2005] NSWCTTT 440,<sup>36</sup> where the relevant Tribunal found a breeder strictly liable for selling a puppy that had a rare genetic defect under sale of goods legislation even though she was not a commercial breeder and the defect was hidden. In this case decided by the Consumer Trader and Tenancy Tribunal of New South Wales, the Applicant contacted the Border Collie Club of New South Wales in 2004 seeking advice on where she could purchase a

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<sup>36</sup> *Dodge v Rockey (General)* [2005] NSWCTT 440.

Border Collie puppy. She was provided with the name of a breeder and made contact with the Respondent and agreed to buy a puppy that had, according to the Respondent been given appropriate veterinary examinations. The Applicant was informed that the puppy had been tested and was clear from four genetic problems in Border Collies. She paid \$700 and was supplied with a puppy 'Abbey' and a large amount of documentation on the care and training of Border Collies. Three days after taking the puppy home she became sick and a veterinarian treated her at the Respondents home. The puppy did not improve, and treatment continued over the next few days. She had a high fever and was referred for specialist care. After more tests she was diagnosed with '*trapped neutrophil syndrome*' (TNS). In the documentation that was provided by the Applicant to the Respondent at the time of purchase there was a note that '*rare occurrences of TNS and epilepsy have also been known*' in the breed. A number of veterinarians were involved in both the care of the puppy and provided evidence in the case. It was agreed that TNS was rare but that affected litters had been born other States but none in New South Wales. Evidence was given by an office bearer of the Border Collie of New South Wales who confirmed that the Respondent maintained high ethical and health standards in her breeding.

The tribunal found that the risk of a puppy having this condition is extremely low and that this was the first and only case in New South Wales. It agreed that the breeder had been careful and taken all the necessary tests but that this '*does not dispose of the matter.*'<sup>37</sup>

The tribunal confirmed that the puppy was 'goods' for the purpose of the *Sales of Goods Act 1923* (NSW)<sup>38</sup> and as such any defect needs to be brought to the attention of the buyer and the mention of its rare occurrence in the information documentation that was provided did not bring it to the buyer's notice.

*The expert evidence also confirms that the defect was present at the time of sale and resulted in the goods being rendered unusable (necessary but somewhat harsh terminology, in the circumstances).*

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<sup>37</sup> Ibid, findings, paragraph 4.

<sup>38</sup> *Sale of Goods Act 1923* (NSW), s64(4).

*The fact that it was not a defect that was easily ascertainable, even by the respondent, is however, in the end result, not relevant.*<sup>39</sup>

The breeder was not commercial in the sense that she did not breed puppies in commercial premises or in great numbers, but she did sell puppies and use the Border Collie Breed Club as a way of advertising. The Tribunal awarded the buyer compensation as the puppy developed a rare genetic defect, resulting in the puppy being euthanised. Despite expert evidence that the disorder was extremely rare, the breeder was ordered to pay compensation on the basis of section 19 in the *Sale of Goods Act 1923* (NSW) (which has since been replaced by the ACL), banning the sale of defective goods. The buyer was successful in arguing that a puppy with this genetic illness was not reasonably fit for its purpose, namely to be a healthy companion. The liability of the seller was held to be quite strict, in that she was held responsible even though the defect was one that no amount of skill or judgment could have detected.

The other five cases relate to one commercial breeder, quite at the end of the spectrum to the Border Collie breeder whose was the subject of the first case. The breeder in these 5 cases bred puppies of mixed breed in large quantities and advertised them for sale using online marketing pages such as Gumtree. During this time, she sold a number of unhealthy and unvaccinated puppies. She would often meet potential buyers in car parks and deliver puppies that became sick (chiefly from parvovirus) within days of them being sold. This breeder came to the attention of the Commissioner for Consumer Protection in 2012 and as the five cases confirm she continued to sell sick puppies despite giving the Commissioner for Consumer Protection in Western Australia a set of enforceable undertakings to stop advertising and selling puppies.<sup>40</sup> All five cases against her were heard in the Supreme Court of Western Australia with the Court making a finding of contempt of court and an order of suspended imprisonment against this breeder in 2015 as she continued to breach the enforceable undertakings and sell puppies in

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<sup>39</sup> *Dodge v Rockey (General)* [2005] NSWCTT 440, paragraphs 7 & 8.

<sup>40</sup> *The Commissioner for Consumer Protection v Armstrong* [2012] WASC 206, *The Commissioner for Consumer Protection v Armstrong* [No 2] [2014] WASC 167, *Armstrong v Commissioner for Consumer Protection* [2014] WASC 71, *The Commissioner for Consumer Protection v Armstrong* [No 4] [2015] WASC 8, *The Commissioner for Consumer Protection v Armstrong* [No 5] [2015] WASC 37.



breach of a number of consumer protection laws, including the *Fair Trading Act 1987 (WA)*<sup>41</sup>, the *Fair Trading Act 2010 (WA)*<sup>42</sup> and the ACL. By the end of 2011 the Commissioner for Consumer Protection had received eight complaints against the breeder for making untrue representations as to characteristics of dogs she was selling. The major misrepresentations she made were that the puppies had been ‘*vet checked, vaccinated, and wormed.*’<sup>43</sup> In each of the cases prior to the one decided in 2015 the breeder was ordered to pay compensation to the puppy buyers that had purchased sick puppies. In the proceedings taken against her in 2012, for example, she was ordered to return to a purchaser Veronica Pakeito both the money the buyer paid for a puppy that was sold with parvovirus and all the money that the buyer had paid in veterinarian costs.<sup>44</sup>

### 3.2.2 Group 2 - Breeder Not Accountable for Defect

The case of *Dodge v Rockey (General)* [2005] NSWCTTT 440 as set out above, compares starkly with the two cases of *Sobol v Planhaven Kennels (General)* [2011] NSWCTT 144<sup>45</sup> and *Allen v O’Loughlin* [2014] NSWCATCD, 21<sup>46</sup> In the first of these the Consumer Trader and Tenancy Tribunal of New South Wales found that a breeder of Newfoundland puppies who sold a puppy for \$2000 that developed hip dysplasia was not liable because even though, it was agreed in evidence that the puppy buyer did ask the breeder about hip dysplasia, no guarantee was given, and the Tribunal confirmed that although the hip issue may have been due to a hereditary defect it could also have been caused by trauma.

In *Allen v O’Loughlin*, the Applicants made a claim for an amount of just over \$4700. This was the price paid for a blue Great Dane puppy, flight charges and veterinary fees. The puppy was purchased in October 2012 and died in April 2013. The Applicants’ claim was that the puppy had

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<sup>41</sup> *Fair Trading Act 1987 (WA)*.

<sup>42</sup> *Fair Trading Act 2010 (WA)* .

<sup>43</sup> *The Commissioner for Consumer Protection v Armstrong* [2012] WASC 206 Beech J, 206.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Sobol v Planhaven Kennels (General)* [2011] NSWCTT 144.

<sup>46</sup> *Allen v O’Loughlin* [2014] NSWCATCD 21.

mega oesophagus, a hereditary condition which considerably reduces the lifespan. The Applicants claimed that the puppy was not of acceptable quality and that they were entitled to a refund and consequential losses. The NSW Civil and Administrative Tribunal found that although the Respondent was a registered breeder of Great Danes, they bred as a hobby only and not as a business. They had only bred three litters in the last ten years and only bred to promote the breed and not as a business. The Respondent gave evidence that he did not claim expenses or declare any income from puppy sales on his tax return. Section 3A of the Consumer Claims Act 1998 (NSW) provides:<sup>47</sup>

*For the purposes of this Act - “a ‘consumer claim’ is: ... a claim by a consumer for the payment of a specified sum of money, ... that arises from a supply of goods or services by a supplier to the consumer, whether under a contract or not, or that arises under a contract that is collateral to a contract for the supply of goods or services.*

The Tribunal determined that the sale of the puppy was not in trade or commerce and that the supply of the puppy had not been in the course of carrying on a business to supply puppies. Therefore, the sale of the puppy did not fall within the definition of a consumer claim pursuant to the *Consumer Claims Act 1988* (NSW). Notwithstanding this finding, the Tribunal did consider the guarantee of acceptable quality provided by the ACL. It considered the evidence that the Great Dane puppy had been examined by a qualified veterinarian prior to being shipped by the Respondent to the Applicants and the fact that the puppy did well living with the Applicants for some time. These 2 things suggest it was at that point of acceptable quality. The puppy subsequently was diagnosed with the medical condition of having: ‘*An enlarged oesophagus, that was possibly hereditary and that he may grow out of.*’<sup>48</sup>

The Tribunal heard evidence that this condition could be hereditary or could be acquired, and since the dog had been in an accident the Tribunal was unable to find on the balance of probabilities that the puppy when sold was not of ‘*acceptable quality*’.

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<sup>47</sup> *Consumer Claims Act 1988* (NSW), s 3A.

<sup>48</sup> *Allen v O'Loughlin* [2014] NSWCATCD 21 at paragraph 11.

### 3.2.3 Group 3 – Importance of Where the Puppy Acquired the Defect

The remaining seven cases were decided on the basis of evidence that determined where the puppy caught the illness or acquired the defect. In the case of *Anderson v Zalac T/as Tuxzat Kennels (General)* [2003] NSWCTTT 580,<sup>49</sup> a Staffordshire Terrier puppy was purchased and subsequently died of parvovirus. The puppy became ill the day after purchase and died under veterinarian care five days later. The Consumer Trader and Tenancy Tribunal of New South Wales confirmed that, as parvovirus takes three to eight days to incubate, the puppy was sold with the defect, so the Applicant was entitled to a refund.

In the case of *Lee v Zalac* [2003] NSWCTTT 362<sup>50</sup> the Consumer Trader and Tenancy Tribunal of New South Wales determined that to be obtain an order pursuant to either ss 8(1) (a) or (b) of the *Consumer Claims Act 1988* (NSW)<sup>51</sup> a buyer needs to notify the breeder of the defect immediately upon detection and prior to taking any action, such as incurring veterinarian expenses. The legislation itself did not include any requirement in relation to such notification. A similar approach was taken in the case of *Desmond v Stopp (General)* [2006] NSWCTTT 383.<sup>52</sup> In this case the Consumer Trader and Tenancy Tribunal of New South Wales did not find that the Applicant had established that the Respondent was aware of the defects at the time the puppy was sold. Despite this, and because the buyer notified the breeder immediately of the defect, the Tribunal found that the puppy was not of merchantable quality and the buyer was entitled to a full refund and reimbursement of travel costs.<sup>53</sup> The reason for this decision was that the

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<sup>49</sup> *Anderson v Zalac T/as Tuxzat Kennels (General)* [2003] NSWCTT 580.

<sup>50</sup> *Lee v Zalac* [2003] NSWCTT 362.

<sup>51</sup> *Consumer Claims Act 1988* (NSW) Section 8 Tribunal Orders (1) In determining a consumer claim wholly or partly in favour of a claimant, the Tribunal may, subject to this Part, make such one or more of the following orders as it considers appropriate:

- (a) an order that requires a respondent to pay to the claimant a specified amount of money
- b) an order that requires a respondent to perform specified work in order to rectify a defect in goods or services to which the claim relates

<sup>52</sup> *Desmond v Stopp* [2006] NSWCTT 383.

<sup>53</sup> *Sale of Goods Act 1923* (NSW) s19(2).

defects (an umbilical hernia that was hereditary in origin, and a splayed digit which both required surgery to correct) were, on the evidence, more likely to have been present at sale than caused in transit or in the limited time in the Applicant's care prior to inspection.

In the case of *Jones v Planhaven Kennels (General)* [2009] NSWCTTT 566<sup>54</sup>, the Consumer Trader and Tenancy Tribunal of New South Wales found that there was no express contractual term or 'guarantee' in relation to the health of two Newfoundland puppies as the Respondent did not give a 'health guarantee' or 'warranty' and the Applicant did not ask for one at the time of purchase. The Tribunal noted that there was an implied term in all consumer contracts that the product is free from 'defects' and 'fit for the purpose'. The Tribunal further confirmed the onus of proof was with the Applicant to prove that the puppies were "defective" or "not fit for purpose". The two puppies purchased by the Applicant from the Respondent were sick with 2 diseases, the first being coccidiosis and the second being eosinophilic enteritis. In relation to the first disease, as the puppies in question were both well when they left the Respondent's care the question was when they contracted coccidiosis. The parties agreed that this illness had an incubation period of three days and that therefore, given the puppies were diagnosed to be suffering the illness three days after the purchase date, the Tribunal found that:

*... the puppies had coccidiosis on the date of purchase and that the presence of coccidia parasites falls within the category of "defect"; therefore, the Respondent is liable for "making good the defect". Given the distance between the Applicant and the Respondent's premises, I am satisfied that the Applicant acted reasonably in having the puppies treated locally, rather than returning the puppies to the Respondent for treatment. Further, I am satisfied that the cost of treatment would have been similar if the puppies were returned to the Respondent and she was given an opportunity to "repair the defect" in the puppies. I am satisfied that the Respondent is liable for the cost of the coccidiosis treatment, being \$167.20.*<sup>55</sup>

The veterinarian evidence was that it was not possible to determine the cause of the second illness, eosinophilic enteritis, as it could have been through any number of causes, wholly

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<sup>54</sup> *Jones v Planhaven Kennels (General)* [2009] NSWCTT 566.

<sup>55</sup> *ibid*, D Harvey – Member Consumer, Trader & Tenancy Tribunal.

unrelated to the first illness. In the absence of any veterinarian evidence to determine the cause, the Tribunal was not satisfied on the balance of probabilities that the Respondent was liable.

The 2013 decision in *Scardoni & Davis (Civil Dispute)* [2013] ACAT 35,<sup>56</sup> decided by the Civil and Administrative Tribunal in the ACT, which has been examined previously with the cases where contract law was considered, is interesting because the Tribunal considered both the *Dogs NSW Regulations Part XVII Code of Ethics* (1995) and *Animal Welfare Code of Practice – Breeding Dogs and Cats 2009* (NSW).<sup>57</sup> Both include a provision that puppies should not be sold prior to eight weeks of age, and the latter includes an additional provision that states:

*If within 7 days a dog or cat is not acceptable to the purchaser due to health reasons, excluding injury, and the complaint is supported by a veterinary practitioner, the breeder and the owner should negotiate in good faith to achieve an equitable outcome.*<sup>58</sup>

The puppy was advertised in the Trading Post for sale on the 23 December and the Applicants agreed to purchase him for \$700. They also paid \$255 in travel costs and the puppy, Tomi was sent by the Respondents by air transport from Sydney to the Applicants in Canberra on the 24 December. The puppy was diagnosed as suffering from parvovirus on the 27 December and was euthanized on the 31 December. The total veterinary fees paid by the Applicants amounted to \$2 000. The Respondents did refund the full purchase price of \$700 on the 28 December. The issue was whether the Applicants should recover the entirety of their loss.

The Tribunal decided there were five relevant issues to be determined: Tomi's date of birth and his age at date of sale; when Tomi contracted parvovirus; whether there was any agreement between the parties about liability for the veterinary cost of treating and euthanizing Tomi and,

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<sup>56</sup> *Scardoni v Davis* [2013] ACAT 35.

<sup>57</sup> *Dogs NSW Regulations Part XIII Code of Ethics 2015* and *Animal Welfare Code of Practice - Breeding Dogs and Cats 2009* (NSW) According to the objects of the *Civil and Administrative Tribunal Act 2008* (ACT) the purpose of the Act is to provide for a wide range of matters and to ensure that the tribunal is accessible and inexpensive and able to resolve disputes simply and inexpensively and consistently whilst achieving justice in a fair way. Clearly then it was appropriate for the tribunal to consider the provisions in both of these breeding codes. *Administrative Tribunal Act 2008* (ACT), s6.

<sup>58</sup> *Animal Welfare Code of Practice - Breeding Dogs and Cats 2009* (NSW) Part 9.1.2.2.

if so, the terms of such agreement; and whether damages are payable and if so, in what amount. After considering all the evidence provided, which included the evidence from four veterinarians the Tribunal could not be satisfied about that part of the claim that alleged the puppy was sold underage. The part of the claim that rested on when the puppy contracted parvovirus was determined on the basis of some admissions made by the Respondent's children that they had taken an unvaccinated puppy, to the beach before he was sold to the Applicants.

The Applicants presented evidence that the puppy was tired when he arrived and became rapidly unwell. The evidence that he had been to the beach and the veterinarian evidence about the incubation period for the parvovirus allowed the Tribunal to find that the Applicants had discharged the onus on them on that issue and that part of the claim was successful. Given that the Respondents had refunded the full purchase price when they heard how sick the puppy was they contended that they had complied with both codes and that in fact the Applicants had accepted the money in full satisfaction of their contractual obligations. There was no written contract between the parties that provided anything that limited the amount of damages for breach of contract that might be paid to the Purchaser. The Tribunal, however, could not be sure that by accepting the \$700 the Applicants were agreeing to bring an end to the contractual relationship. The Tribunal found that because the provision of a healthy puppy was a fundamental term in the contract, the Respondents needed to compensate the Applicants for contemplated losses. The Respondents should have been aware, given their experience as breeders, that veterinarian costs were a reasonably foreseeable consequence of selling a sick puppy.<sup>59</sup>

In *Maslij v Attard trading as Chevromist (Civil Claims)* [2014] VCAT 719, the essential factual question was whether the puppy that died from parvovirus had that disease when it left the Respondents' kennels. If it did then the Tribunal confirmed this amounted to sale of defective goods within the meaning of the ACL, and it would have allowed the Applicants to evoke the health guarantee they received when they purchased the puppy. The Applicants alluded to the

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<sup>59</sup> *Scardoni v Davis* [2013] ACAT 35, paragraphs 121- 124.

relevant provisions in the ALC at the hearing, saying that they would not have bought the dog had they known it was sick. This was a reference to the definition of ‘acceptable quality’ in section 54(2) of the ACL. With respect to the ACL, the Tribunal found that the Applicants had failed to establish any evidence that suggested the puppy had parvovirus at the time of purchase. The Respondents’ counter claim, which sought a refund of the \$1295 and \$1341 they had paid to the Applicant on their agreement to transfer the puppy back to them, was successful.

In the final case, *Gardner v James (Civil Claims)* [2015] VCAT 169, the health of a Staffordshire Bull Terrier was at issue. As in the case of *Scardoni & Davis (Civil Dispute)* [2013] ACAT 35 the Tribunal considered both the Dogs Victoria *Code of Practice* and the *Code of Practice for the Operation of Breeding and Rearing Businesses 2014* (Vic).<sup>60</sup> The Tribunal:

*.... raised with the parties four possibly relevant guarantees arising under the Australian Consumer Law, namely the guarantees as to acceptable quality (section 54); fitness for a disclosed purpose (section 55) that the goods correspond with their description (section 56) and compliance with any express warranty (section 59).<sup>61</sup>*

The Tribunal was not prepared to make much of the fact that there had been a breach of both codes, in that the Respondent had sold the dog below the age of eight weeks.<sup>62</sup> The Tribunal did consider if there was a breach of the guarantee as to acceptable quality because the dog was not healthy. It concluded that, given the evidence as to the dog’s health at the time of sale, it could make no finding that there had been a breach of the guarantee of acceptable quality.

To summarise: the cases show that the judicial system has not yet developed a clear approach to dealing with the sale of sick puppies, other than to confirm that it is imperative to determine if

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<sup>60</sup> *Dogs Victoria Regulations, Codes, Policies & Procedures* (Code - Part 20.1), 15 June 2017 *Code of Practice for the Operation of Breeding and Rearing Businesses 2014* (Vic).

<sup>61</sup> *Gardner v James* [2015] VCAT 169, paragraph 17.

<sup>62</sup> For example clause 20.1.17 in the Dogs Victoria code states: A member shall not, within Australia, sell or otherwise transfer from that member’s care any puppy under eight [8] weeks of age without the approval of the Victorian Canine Association Inc. *Dogs Victoria Regulations, Codes, Policies & Procedures* (Code - Part 20.1), 15 June 2017.

the defect existed at the time of sale. A consideration of all the cases suggests that courts and tribunals will be inclined to compensate buyers of puppies with inheritable diseases, as the disease exists at the time of sale, as well as buyers of puppies that are ill at the time of sale. The issue of the status of the seller has also been important in some cases but not important in others.

Tribunals seem willing to make breeders accountable for selling defective puppies, if owners are able to prove that the illness or defect existed at the time of the sale. Tribunals have acknowledged both the emotive nature of sick puppy cases <sup>63</sup> and that:

*....the terminology used in consumer claims does not sit well when what has been purchased is a companion animal. Nevertheless, consumer claims relating to companion animals are treated no differently than those relating to a refrigerator or television.*<sup>64</sup>

These cases provide support for the reality that for many dog owners their dog is not property but either a companion or family member. They provide a backdrop to one of the research questions that is addressed in this research, namely what people want when they acquire a dog.

## PART III. DOG MANAGEMENT

### 1. Introduction

The second component in the current regulatory framework are those laws and regulations that place obligations on companion animal owners to manage their animals to ensure that they are effectively controlled and do not become a nuisance or engage in behaviour that affects others including behaviour that injures other people, animals or things. As those that breed dogs are subject to these regulations, they form part of the regulatory regime relating to dog breeding. Obligations to effectively control and manage dogs are imposed both by statute and by the common law, making owners liable for the behaviour of their dogs. There is also regulation at

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<sup>63</sup> *Scardoni v Davis* [2013] ACAT 3512. The Tribunal noted, from the evidence, the emotional impact the events in this case have had on both parties.

<sup>64</sup> *Jones v Planhaven Kennels (General)* [2009] NSWCTT 566. Findings: It is important to acknowledge that the terminology used in consumer claims does not sit well when what has been purchased is a companion animal. Nevertheless, consumer claims relating to companion animals are treated no differently than those relating to a refrigerator or television.



local council and State and Territory level around control and management. This consideration of dog management regulation is not intended to be comprehensive but instead to recognise that both State and Territory governments and local government play a role in dog management.

## 2. Dog Management

All States and Territories have regulation that imposes obligations on dog owners to manage their dogs. Some States and Territories such as Victoria, have welfare/anti-cruelty legislation that serves a dual purpose, in that it prohibits cruelty and mandates the considerate treatment of animals. This is the case with the *Prevention of Cruelty to Animals Act 1986* (Vic) in Victoria. It is supported by the *Domestic Animals Act 1994* (Vic)<sup>65</sup> which has as its major purpose: the promotion of animal welfare; the responsible ownership of dogs and cats; the protection of the environment by providing (inter alia) for such things as registration and identification schemes; and a registration scheme for domestic animal businesses that promote the maintenance of standards. This legislation consists of 105 sections that are contained in 17 parts.<sup>66</sup>

This is a comprehensive Act, so a full coverage of all sections is not possible. A summary of the major management obligations that this Act imposes on dog owners and dog breeders is now provided. Part 2 sets out the requirements in relation to registration and desexing of dogs in Victoria. All dogs over the age of three months are required to be registered and permanently identified by microchip and the owner's contact details registered with a nationally recognised database.<sup>67</sup> All dogs, except those owned by Domestic Animal Businesses or members of applicable organisations such as one of the State or Territory Canine Association must be desexed. Part 3 provides: regulation in relation to stray dogs and cats and those found at large; dog attacks, nuisances created by dogs or cats and in relation to the abandonment and surrender of animals. This part and part 3A set out provisions in relation to dangerous, menacing dogs and restricted breeds. This regulation is considered more in sub part 3 of this

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<sup>65</sup> *Domestic (Feral and Nuisance Animals) Act 1994* (Vic) s1.

<sup>66</sup> *Domestic Animals Act 1994* (Vic).

<sup>67</sup> *Ibid*, ss10 & 10C.

section. Section 42 of the *Domestic Animals Act 1994* (Vic) authorises a Council to make laws regulating the number of dogs (or cats) which can be kept on premises in the municipal district of the Council.<sup>68</sup>

Part 4 of the Act contains 27 sections that regulate the registration and conduct of domestic animal businesses. The Act defines a domestic animal business as:

*(a) an animal shelter, Council pound or pet shop; or*

*(b) an enterprise which carries out the breeding of dogs or cats to sell, where—*

*(i) in the case of an enterprise whose proprietor is a member of an applicable organisation, the enterprise has 10 or more fertile female dogs or 10 or more fertile female cats; or*

*(ii) in the case of an enterprise whose proprietor is not a member of an applicable organisation, the enterprise has 3 or more fertile female dogs or 3 or more fertile female cats; or*

*(c) an enterprise that is run for profit which carries out the rearing, training or boarding of dogs or cats;*<sup>69</sup>

These businesses must be registered, and local Councils have the power to refuse registration or to suspend or revoke registration. Division 4 of Part 4 allows the State Minister to make Code of Practice for any kind of business that can specify the standards for the conduct of domestic animal businesses. Such a code has been established in Victoria and this is considered in more depth in Part VI of this Chapter. Part 5 of the Act provides for the boarding of cats and dogs. Parts 7 to 7F provide general enforcement and powers to seize, dispose and identify certain dogs as necessary to authorised officers, the appointment of which is also provided for in those Parts.

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<sup>68</sup> In all States and in the ACT it is mandatory to register all dogs. RSPCA Australia, *Is it Mandatory to Register Domestic Dogs and Cats?* (2013) RSPCA Australia <[http://kb.rspca.org.au/Is-it-mandatory-to-register-domestic-dogs-and-cats\\_285.html](http://kb.rspca.org.au/Is-it-mandatory-to-register-domestic-dogs-and-cats_285.html)>.

<sup>69</sup> *Domestic Animals Act 1994* (Vic) s3(1).

A full list of the applicable State and Territory anti-cruelty /animal welfare legislation is provided, as is a list of the applicable dog and cat control legislation in each State and Territory.<sup>70</sup> In the Australian Capital Territory, as is the case in Victoria there is both the *Animal Welfare Act 1992* (ACT) and the *Domestic Animals Act 2000* (ACT).<sup>71</sup> The *Domestic Animals Act 2000* (ACT) was amended in 2015 to include the provision at state level of a Registrar of Domestic Animal Services. These amendments introduced a breeder licensing scheme and imposed an obligation on sellers of dogs to inform the Registrar of the name and address of the new owner/ keeper.<sup>72</sup>

Each State and Territory also has local government legalisation that authorises local governments to make local laws in relation to local matters. This enables them to make regulations around animals and impose obligations on the public in relation to animals and empowers local governments and other officers to enforce this legislation. These Acts provide local councils with broad discretionary powers that are aimed at protecting the public.<sup>73</sup> In Queensland, for example, section 28 of the *Local Government Act 2009* (Qld) provides that local governments may make and enforce any local law that is necessary or convenient for the good rule by local government of its area. Local councils are able to require all dogs to be registered with the council, and to require any one who keeps more than a minimum number of dogs to obtain a permit or kennel licence.<sup>74</sup>

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<sup>70</sup> Animal Welfare/Anti-Cruelty Legislation - *Animal Welfare Act 1992* (ACT), *Prevention of Cruelty to Animals Act 1979* (NSW), *Animal Welfare Act 2000* (NT), *Animal Care and Protection Act 2001* (Qld), *Animal Welfare Act 1985* (SA), *Animal Welfare Act 1993* (Tas), *Prevention of Cruelty to Animals Act 1986* (Vic), *Animal Welfare Act 2002* (WA) Dog and Cat Control Legislation - *Dog Control Act 1975* (ACT), *Companion Animals Act 1998* (NSW), *Animal Management (Cats and Dogs) Act 2008* (Qld), *Dog and Cat Management Act 1995* (SA), *Dog Control Act 2000* (Tas), *Domestic (Feral and Nuisance Animals) Act 1994* (Vic), *Dog Act 1976* (WA).

<sup>71</sup> *Animal Welfare Act 1992* (ACT) and *Domestic Animals Act 2000* (ACT).

<sup>72</sup> Division 3.1 Controlling Breeding and Section 12 Change of Keeper *Domestic Animals Act 2000* (ACT).

<sup>73</sup> *Isbester v Knox City Council* (2015) 20, paragraph 29.

<sup>74</sup> Local Government Acts - *Local Government Act 2009* (Qld) ) and *Local Government Act 1989* (Vic) as applied in such cases as *Ho v Greater Dandenong City Council* (2012) 188 LGERA 424 [425]. As an example see the Brisbane City Council that requires all dogs to be registered and that anyone that owns three or four dogs must seek a permit to enable the keeping of up to four dogs. Brisbane City Council, *Cat and Dog Permits* (21 October 2015

Most local councils have animal management officers that ensure that companion animal owners in their municipalities comply with these local laws and regulations.<sup>75</sup> Many local councils also have animal shelters or pounds that take in lost and abandoned companion animals. Most also operate animal management plans that include the running of community education programs to promote responsible pet ownership. Many have for a number of years operated types of incentives to tackle pet overpopulation. Some attempt to educate the community and some offer reduced cost de-sexing, as well as the automatic de-sexing of dogs that are rehomed.<sup>76</sup>

Most States and Territories mandate that all dogs be micro-chipped, with the implanting of a microchip into a dog by either a veterinarian or a person holding a licence.<sup>77</sup> The intention is that compulsory micro chipping, and the recording of the unique microchip number by a central registry agency will assist councils with their dog registration obligations and in reuniting lost dogs with their owners. Despite this, Rohlf 's 2013 research found that many local councils do little to enforce compliance with this requirement, and there can be issues with the data recorded on the microchips when it actually comes to reuniting stray dogs with their owners.<sup>78</sup>

Rohlf's research indicated that it can be easy for some dog owners to engage in a form of social loafing, meaning that they fail to register their dogs as they know that councils provide the same services to dog owners whether or not they register their dogs. Many register their dogs only if

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2016) <<http://www.brisbane.qld.gov.au/laws-permits/laws-permits-residents/animals-pets/cats-dogs/dog-registration/new-registration-dogs>>.

<sup>75</sup> Miah Gibson, 'The Universal Declaration of Animal Welfare' (2011) 16(2) (2011) *Deakin Law Review* 540 , 557.

<sup>76</sup> Linda C Marston, Pauleen C Bennett and Grahame J Coleman, 'What Happens to Shelter Dogs? Part 2. Comparing Three Melbourne Welfare Shelters for Nonhuman Animals' (2005) 8(1) *Journal of Applied Animal Welfare Science* : JAAWS 25.

<sup>77</sup> See for example *Dog Control Act 2000* (Tas)– Implanting of microchips.

<sup>78</sup> Vanessa Ilse Rohlf, *Beliefs Underlying Dog Owner's Management Practices* (Doctor of Philosophy Thesis, PhD Thesis, Monash University 2013),<sup>34</sup> and Emily Lancaster et al, 'Problems Associated with the Microchip Data of Stray Dogs and Cats Entering RSPCA Queensland Shelters' (2015) 5(2) *Animals* 332.

they believe there is a high likelihood that they will be penalised for not complying.<sup>79</sup> This suggests that even councils may have no real awareness of how many dogs exist in their jurisdictions. Even if councils hold accurate data there is no evidence that this data is being used, by them or by the businesses that undertake micro-chipping in Australia to create a consolidated data base of dogs. It is difficult to regulate an unknown population of dogs. More effective record keeping, and centralisation of micro-chipping databases will assist regulators.

### 3. Dangerous Dogs and Negligence

A number of States and Territories regulate the ownership of dangerous dogs and some breeds of dogs that have been declared to be restricted breeds.<sup>80</sup> The Commonwealth Government has prohibited the importation of 5 breeds of dogs that have been deemed dangerous.<sup>81</sup>

Dogs can be dangerous, and this regulation has arisen because of this. Dogs can injure other dogs, people and property. This research does not need to elaborate on this but acknowledges that any owner of dangerous property needs to be aware of the potential danger that it may pose. Tort law, a set of common law duties exist that impose a duty of care on an owner of any property that can cause injury to others. This law applies to those that both own and breed dogs that do pose a threat to others. This law allows those injured by dogs to seek compensation from the owner of any dog that causes injury.

## PART IV. DOG WELFARE

### 1. Introduction

The third component to the legal and regulatory framework comprises those laws and other regulations that provide for an animal's welfare and rights. This body of law and regulation recognises the significance of companion animals in our lives. Dogs and other animals are

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<sup>79</sup> Rohlf, above n 78, 170.

<sup>80</sup> *Domestic Animals Act 2000* (ACT) Division 2.3 ss 22-28, *Companion Animals Act 1998* (NSW) Part 5 ss33-58H, *Summary Offences Act* (NT), s75A, *Animal Management (Cats and Dogs) Act 2008* (Qld) div 2 ss60-64, *Dog Control Act 2000* (Tas) div 3 ss29-34D, *Domestic Animals Act 1994* (Vic) ss 16 & 17, *Dog Act 1976* (WA) div 2 ss33E – 33M.

<sup>81</sup> *Customs Act 1901* (Cth) and *Customs (Prohibited Import) Regulations 1956* (Cth) Schedule 1.

protected by an animal welfare regulatory framework that started to be developed over 150 years ago in Australia, and that has expanded and been redefined over this time as we learn more about animals and how the law can effectively provide for and protect them.<sup>82</sup>

The Australian Constitution provides the Commonwealth Government with limited powers to regulate in some areas of animal law. There is a quarantine power, a fisheries power, a trade and commerce power and an external affairs power.<sup>83</sup> The combination of these powers enables the Commonwealth Government to regulate in relation to animals in international trade, the import and export of animals, biosecurity, customs and the management of feral and pest species. The primary involvement of the Commonwealth Government in regulating dogs is therefore in terms of how dogs are imported into and exported out of Australia. Until 2013 the Commonwealth Government played a role in determining national animal welfare strategy and policy, and it worked with the States and Territories to develop nationally consistent animal welfare standards and guidelines.<sup>84</sup> Since 2013 the Commonwealth Government has not played a role in animal welfare strategy.

The first anti-cruelty legislation was enacted in Van Diemen's Land in 1837, with the other colonies following in the next few years.<sup>85</sup> Currently each State and Territory has its own legislation aimed at promoting animal welfare and criminalising animal cruelty.<sup>86</sup> Around these one or 2 pieces of legislation is an extensive system of regulation that supplements the chief Act

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<sup>82</sup> Mike Radford, *Animal Welfare Law in Britain: Regulation and Responsiveness* (Oxford University Press 2001), 10.

<sup>83</sup> *Commonwealth of Australia Constitution Act* (Cth), s51.

<sup>84</sup> Alex Bruce, *Animal law in Australia: An Integrated Approach* (LexisNexis Butterworths, 2012), 71.

<sup>85</sup> Steven White, 'Regulation of Animal Welfare in Australia and the Emergent Commonwealth: Entrenching the Traditional Approach of the States and Territories or Laying the Ground for Reform' (2007) 35 *Fed. L. Rev.* 347, 349.

<sup>86</sup> *Animal Welfare Act 1992* (ACT), *Prevention of Cruelty to Animals Act 1979* (NSW), *Animal Welfare Act 2000* (NT), *Animal Care and Protection Act 2001* (Qld), *Animal Welfare Act 1985* (SA), *Animal Welfare Act 1993* (Tas), *Prevention of Cruelty to Animals Act 1986* (Vic), *Animal Welfare Act 2002* (WA).

in each state, influenced by the developing science of animal welfare in attempting to provide continual improvements.<sup>87</sup>

Each Act in each State and Territory contains enforcement provisions and provisions that allow for the appointment of inspectors and authorised officers. An example is Parts 2 and 2A of *Prevention of Cruelty to Animals Act 1986* (Vic) and Part 7 of the *Domestic Animals Act 1994* (Vic) which provides for the appointment of authorised officers.<sup>88</sup> General inspectors are police officers, RSPCA officers, employees under the *Public Administration Act 2004* (Vic),<sup>89</sup> local council officers (acting within their own council municipality) and officers declared by the Department of Environment and Primary Industries in times of emergency. Specialist inspectors may be appointed by the Minister of Agriculture. Authorised Officers are also appointed by the Minister pursuant to the *Public Administration Act 1994* (Vic). Each State or Territory has similar legislation providing for the appointment of police officers, department employees and RSPCA officers as inspectors for the purposes of inspecting and investigating incidents of animal cruelty. Local councils also play an important role in animal welfare, although chiefly concerned with animal management as has been set out above.

As set out in Section III above, most States and Territories have dog control legislation.<sup>90</sup> The purpose of that legislation is not only to ensure that dogs are effectively managed but also to promote animal welfare. In some States and Territories, the legislation is also supported by

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<sup>87</sup> Radford, above n 82, 291.

<sup>88</sup> *Domestic (Feral and Nuisance Animals) Act 1994* (Vic) s1.

<sup>89</sup> *Public Administration Act 2004* (Vic)

<sup>90</sup> *Dog Control Act 1975* (ACT), *Companion Animals Act 1998* (NSW), *Animal Management (Cats and Dogs) Act 2008* (Qld), *Dog and Cat Management Act 1995* (SA), *Dog Control Act 2000* (Tas), *Domestic Animals Act 1994* (Vic), *Dog Act 1976* (WA).

codes of practice specifically relating to dogs. Some States and Territories are comprehensively covered whilst others have fewer or no codes of practice relating to companion animals.<sup>91</sup>

## 2. Role of RSPCA

A key stakeholder group in dog welfare in Australia is RSPCA Australia, together with the relevant State and Territory societies. These organisations are non-State actors that play a significant role in animal welfare, particularly in relation to companion animals. The RSPCA Charter is that animals must be treated humanely, and that humans should bestow a level of care that is merited by the nature of an animal's sentience.

RSPCA Australia is a federated organisation made up of eight independent State and Territory RSPCA Societies. Each operates according to national policies and positions on animal welfare and they work with government and industry to address the issues. In each State and Territory, RSPCA inspectors are given powers under the applicable animal welfare/anti-cruelty legislation to inspect and enforce animal welfare legislation, including the power to enter, search and inspect premises and to collect evidence of cruelty offences.<sup>92</sup>

The RSCPA utilises a wide range of regulatory techniques in its pursuit of the humane treatment of animals.<sup>93</sup> It plays a vital role in enforcing animal cruelty and animal welfare legislation. Its role and effectiveness as a provider of inspectors to assist in the enforcement of animal welfare is not without its critics. In 2015 in Western Australia a president went on public record stating that it was his opinion that the RSPCA in Western Australia was failing to understand that, as all of its inspectors are appointees of the State, it was the State and not the RSPCA that was

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<sup>91</sup> Harlock Jackson Pty Ltd, 'Review of Existing Animal Welfare Arrangements for the Companion Animals Working Group' (July 2006 2006) <[http://www.daff.gov.au/\\_\\_data/assets/pdf\\_file/0018/152109/aaws\\_stocktake\\_companion.pdf](http://www.daff.gov.au/__data/assets/pdf_file/0018/152109/aaws_stocktake_companion.pdf)> page 11.

<sup>92</sup> RSCPA Australia, *Our Powers* (2017 2013) <<https://www.rspca.org.au/animal-cruelty/our-powers>> and Steven White, 'Regulation of Animal Welfare in Australia and the Emergent Commonwealth: Entrenching the Traditional Approach of the States and Territories or Laying the Ground for Reform?' (2007) 35(3) *Federal Law Review*, 352.

<sup>93</sup> White, above n 3, 352.



ultimately accountable for their actions.<sup>94</sup> Having a charitable organisation assist in animal welfare does not come without criticism. This research acknowledges that the RSPCA does receive criticism for how it undertakes some of its roles in dog welfare in Australia. It is beyond the scope of this research to detail the extent of the criticism that the various State and Territory RSPCA organisations receive but empirical evidence as outlined in the findings in Chapter 8 does indicate that there is criticism of the RSPCA as regulatory actor in dog welfare in Australia.

## PART V. DOG BREEDING AND SELLING REGULATION

### 1. Introduction

Dogs can be bred and sold by anyone in Australia who has a female and male dog of breeding age. Sometimes dogs are bred accidentally and sold on as a way to dispose of the puppies. This research does not intend to cover all breeding but instead focuses on those that breed intentionally. This section examines the codes at State and industry level that attempt to regulate commercial and hobby dog breeding.

### 2. Codes of Practice / Codes of Conduct

Codes of practice that regulate how animals are treated exist in relation to farm animals, companion and circus animals.<sup>95</sup> There is no national code of practice that applies to dog breeding and selling. Instead, the Commonwealth Government has developed guidelines that can be used by the State and Territories to develop their own codes.<sup>96</sup>

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<sup>94</sup> John Flint, 'Former Boss Attacks 'Lost RSPCA'', *Perth Now, Sunday Times* (Perth), 10 May 2015 <<http://www.perthnow.com.au/news/special-features/in-depth/former-boss-attacks-lost-rspca/news-story/981ed42960cb9277a87648f6bf279a93>>.

<sup>95</sup> Cao, above n 8, 116.

<sup>96</sup> Katherine Cooke, 'Defining the Puppy Farm Problem: An Examination of the Regulation of Dog Breeding, Rearing and Sale in Australia' (2011) 5 *Australian Animal Protection Law Journal* 3, 8 and Australian Government, *Australian Animal Welfare Standards and Guidelines (Model Codes of Practice)* (2017) <<http://www.agriculture.gov.au/animal/welfare/standards-guidelines>>.

## 2.1 State Based Codes

### 2.1.1 Dog Breeding

Currently New South Wales and Victoria have State based codes of practice for those who breed dogs and cats.<sup>97</sup> Appendix 3 sets out a Chronology of Regulation of Dog Breeding in Australia. From 2012, Queensland, Tasmania and South Australia, have considered the introduction of breeding codes. The Victorian Government has been particularly active in seeking ways to improve animal welfare outcomes for dogs. Victoria's *Domestic Animals Amendment (Puppy Farms and Pet Shops) Bill 2016* (Vic) received its first reading in October 2016 and at the time of submission of this thesis this bill had not yet had its second reading.<sup>98</sup>

The purpose of these codes of practice is to specify minimum standards of accommodation, management and care as appropriate to the physical and behavioural needs of dogs (and cats) housed in breeding and rearing establishments. These codes place certain obligations on

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<sup>97</sup> *Animal Welfare Code of Practice - Breeding Dogs and Cats 2009* (NSW); *Animal Welfare Standards and Guidelines for Dogs 2012* (Tas) , *Code of Practice for the Operation of Breeding and Rearing Businesses 2014* (Vic). Victoria has five Codes of Practices in place that relate to dogs and dog welfare and three that relate to both dogs and cats. NSW also has codes that relate to dogs including a code on breeding of cats and dogs. See : *Standard for Restricted Breed Dogs in Victoria, Code of Practice for the Debarking of Dogs, Code of Practice for the Operation of Dog Training Establishments, Code of Practice for the Operation of Greyhound Establishments and Code of Practice for the Private Keeping of Dogs* and see Victorian State Government - Department of Environment and Primary Industries, Breeding and Rearing Code Review (2013) <http://www.depi.vic.gov.au/pets/domestic-animal-businesses/breeding-and-rearing-businesses/breeding-and-rearing-code-review>.

<sup>98</sup> Victorian Government, 'First House Details: Legislative Assembly : *Domestic Animals Amendment (Puppy Farms and Pet Shops) Bill 2016* (Vic)' (2016) <[http://www.legislation.vic.gov.au/domino/Web\\_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/6a5d081fa18fd208ca2580490078c5fd!OpenDocument](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/6a5d081fa18fd208ca2580490078c5fd!OpenDocument)>. This proposal seeks to mandate that breeders register as a Domestic Animal Breeding Business if they have ONE or more fertile female dogs. The draft bill currently provides that from the 10th April 2020 breeders can keep a maximum of 10 breeding females only if they are registered with their local council as a domestic animal breeding business; if a breeder is granted an Excess Animal Permit and if the Victorian Planning Provisions permit dog breeding on your property. The fees for registration of a Domestic Animal Breeding Business will be set by the local Council. The penalty for exceeding 10 fertile breeding females is proposed to be 164 penalty units – approximately \$25,000. A domestic Animal Breeding Business must comply with the *Code of Practice for the operation of Breeding and Rearing Businesses 2014*. The draft proposed that if a breeder has 6 or less adult dogs they may keep them in their homes without building kennels that comply with the Code of Practice for the operation of Breeding and Rearing Businesses 2014. There will be a central Domestic Animal Business Registry and microchip databases will identify where puppies are being produced.

breeders. In New South Wales the code is designed for everyone involved in the activity of breeding dogs and cats. Clause 3.2 of the code defines breeding as ‘*the business of breeding of litters of animals for sale.*’<sup>99</sup>

The Victorian *Code of Practice for the Operation of Breeding and Rearing Businesses 2014* (Vic) sets out obligations in relation to: staffing; facility operation; record keeping; sale of animals; management of dogs and management of cats. Breeders must keep records for each dog and puppy, including records of each dog’s microchip, current health and vaccination status. There are requirements in relation to nutrition, health care, exercise, enrichment, socialisation and handling, housing and working and guardian dogs. Breeding obligations that are set out in clause 6(3), also include obligations where a breeder is notified of heritable diseases in puppies sold by them.<sup>100</sup>

Each breeder must register their breeding establishment with the local council and allow inspections to take place.<sup>101</sup> These codes are intended to demonstrate to the general community that those involved in breeding dogs and cats are concerned for the welfare of their animals. The codes are also intended to supplement the obligations that breeders have under the applicable prevention of cruelty or animal welfare legislation that operates within the State, the applicable local government obligations, and, the applicable companion animal legislation.<sup>102</sup>

Both the Victorian and New South Wales Governments have stated that the purpose of these breeding codes and the applicable companion/ domestic animal legislation is to allow these States to more effectively regulate and monitor large scale commercial breeding facilities, and to

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<sup>99</sup> *Animal Welfare Code of Practice - Breeding Dogs and Cats 2009* (NSW).

<sup>100</sup> *Code of Practice for the Operation of Breeding and Rearing Businesses 2014* (Vic), page 25.

<sup>101</sup> The NSW code applies to all breeders. The Victorian code does not apply to members of the ANKC who have less than 10 fertile female dogs. The Tasmanian code has been modelled on the NSW codes and confirms this in its introductory pages.

<sup>102</sup> *Animal Welfare Code of Practice - Breeding Dogs and Cats 2009* (NSW) *Animal Welfare Code of Practice – Breeding Cats and Dogs*

reduce the occurrence of puppy farms.<sup>103</sup> The term puppy farm has been defined in the glossary and considered previously in this thesis. Puppy farming is an issue that generates widespread social, public and government attention in Australia so it is not surprising that Australian States and Territories continue to take steps to reduce to puppy farms. In Victoria, increased penalties can be applied to dog breeding facilities found to have been involved in animal cruelty.<sup>104</sup>

The existence of puppy farms and the inhumane treatment of dogs in them has been identified as one of the major issues in dog breeding in Australia in Part III of Chapter 3.

### 2.1.2 Dog Selling

Victoria, Queensland, South Australia and the ACT have codes of practice for the sale of animals in pet shops. These codes provide retailers of animals, particularly dogs and cats, with guidelines for the care and management of animals sold through pet shops.<sup>105</sup> A pet shop has been defined in the Victorian code as being a *shop situated in a permanent location*.<sup>106</sup> The code that operates in the ACT regulates all sales including sales at pet shops and extends to private backyard sales and sales that take place at fetes and schools and sales that result from newspaper or internet

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<sup>103</sup> *Domestic Animals Act 1994* (Vic), Sarah Gerathy, 'NSW Government Baulks at Puppy Farm Licensing Scheme, Against Advice' (2016) 2017 *ABC News* <<http://www.abc.net.au/news/2016-02-26/nsw-government-puppy-farms-new-regulations-after-abuse-inquiry/7201710>> and Jaala Pulford, 'New Laws to Stamp Out Cruel Puppy Farms' (2016) <<https://284532a540b00726ab7e-ff7c063c60e1f1cafc9413f00ac5293c.ssl.cf4.rackcdn.com/wp-content/uploads/2016/10/161011-New-Laws-To-Stamp-Out-Cruel-Puppy-Farms.pdf>>.

<sup>104</sup> There are both Federal and State Government webpages, books, animal welfare organisation webpages and numerous newspaper articles that confirm the issue of puppy farming in Australia. Reference is given here to an example of each: Australian Government - Department of Agriculture Fisheries and Forestry, *Puppy Farming* (13 August 2014 2014) <<http://www.daff.gov.au/animal-plant-health/welfare/animal-welfare-issues>>, Peter Sankoff, Steven White and Celeste Black (eds), *Animal Law in Australasia: Continuing the Dialogue* (The Federation Press, 2nd ed, 2013), 100, Beau Donnelly, 'Diseased, Injured Dogs Rescued from Puppy Farm', *The Age Victoria* (Victoria), 2014 <<http://www.theage.com.au/victoria/diseased-injured-dogs-rescued-from-puppy-farm-20140721-zt6x3.html>>.

<sup>105</sup> *Code of Practice for the Care and Management of Animals in Pet Trade 2005* (SA), *Code of Practice for the Operation of Pet Shops 2005* (Vic); *Queensland Code of Practice for Pet Shops 2008* (Qld) and *Code of Practice for the Sale of Animals in the ACT 2013* (ACT).

<sup>106</sup> *Code of Practice for the Operation of Pet Shops 2005* (Vic).

advertising.<sup>107</sup> These codes do not extend to sellers that sell either on line or directly from their homes.

The Victorian code (first published in 2005 and last updated in 2009) requires that proprietors of pet shops must provide appropriate accommodation, protection both from other animals and disease, food and water and undertake regular observations to ensure early detection of any problems.<sup>108</sup> This code also mandates that dogs are not sold under the age of eight weeks and in line with the *Code of Practice for the Operation of Breeding and Rearing Business 2014* (Vic), the pet shop must offer a guarantee to take back a sick puppy and offer a full refund or replacement puppy within seven days. The guarantee also provides that a buyer can take back a puppy for any reason if returned within three days and the pet shop must provide a 75% refund.<sup>109</sup>

The South Australian *Code of Practice for the Care and Management of Animals in the Pet Trade 2005* (SA) applies to all persons who carry on a business of or are involved in selling companion animals for profit. It is intended to set standards for the care and management of animals by those who operate or work in premises that sell companion animals for profit. It provides details as to housing facilities including cage design, cage sizes; equipment; staffing; animal health; inspections; transport and the provision of printed information and advice on the feeding and care of the animal being purchased, should the purchaser not acknowledge that he or she has expertise in animal husbandry.<sup>110</sup>

The *Code of Practice for the Sale of Animals in the ACT 2013* (ACT),<sup>111</sup> covers all sales of all companion and produce animals wherever such sales occur. It requires all sellers to take reasonable steps to protect the welfare of the animals that they have for sale and to make

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<sup>107</sup> Australian Capital Territory Government, 'Frequently Asked Questions on the Code of Practice for the Sale of Animals in the ACT', 2013 <[http://www.tccs.act.gov.au/\\_\\_data/assets/pdf\\_file/0012/502104/Sales-Code-Frequently-Asked-Questions.pdf](http://www.tccs.act.gov.au/__data/assets/pdf_file/0012/502104/Sales-Code-Frequently-Asked-Questions.pdf)>

<sup>108</sup> *Code of Practice for the Operation of Pet Shops 2005* (Vic)

<sup>109</sup> Ibid, clause 2.4.

<sup>110</sup> *Code of Practice for the Care and Management of Animals in Pet Trade 2005* (SA).

<sup>111</sup> *Code of Practice for the Sale of Animals in the ACT 2013* (ACT).

buyers aware of requirements for the care and welfare of animals being purchased. It also requires that sellers provide information on vaccinations, registration and health records. These obligations are mandatory, as the code is listed under the *Animal Welfare Act 1992* (ACT).

## 2.2 Industry Based Codes and Standards

### 2.2.1 Dog Breeding

Dog owners involved in pure breed dog breeding within Australia who want to have the dogs they breed registered and issued with a pedigree that authenticates parentage must comply not only with breed standards as set out above, but also with the regulations of their State canine authority and those created by the ANKC. All Australian State and Territory canine authorities have codes of ethical breeding and the ANKC has a *National Code of Ethical Dog Ownership*.<sup>112</sup> These breeders must also comply with the ANKC *Code of Ethics of Responsible Dog Ownership*<sup>113</sup> and *Code of Practice for Hereditary Diseases*.<sup>114</sup>

The ANKC National Code currently includes 31 clauses, the majority of which attempt to ensure members care for their dogs and continue to strive to improve their knowledge of their chosen breed. Included in this is the need to understand the requirements for the care, welfare and betterment of dogs and breeding of their dogs in a responsible manner. Sixteen of the 31 clauses relate specifically to breeding, and seek to ensure breeders only breed mature dogs, they limit the number of litters that bitches can have and require that breeders only sell or dispose of healthy dogs (unless they specifically obtain written acknowledgement from the buyer of any health issues that the breeder is aware of at the time of the sale).<sup>115</sup>

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<sup>112</sup> Appendix 3 sets out the name of the State/Territory Canine Authorities and sets out where to find the code of ethics and rules that relate to breeding dogs.

<sup>113</sup> Australian National Kennel Council Limited *National Code of Ethics of Responsible Dog Ownership* 2016.

<sup>114</sup> Australian National Kennel Council Limited, *National Code of Practice for Hereditary Diseases* (2013) <<http://www.ankc.org.au/About-ANKC/National-Code-of-Practice-for-Hereditary-Diseases.aspx>>.

<sup>115</sup> Australian National Kennel Council Limited *National Code of Ethics of Responsible Dog Ownership* 2016.

Regulation 11 in the National Code is of interest to this research, as it covers the notion of commercial breeding, something that the ANKC and the State and Territory Canine Associations discourage in the code by providing that:

*A member shall breed primarily for the purpose of improving the quality and / or working ability of the breed in accordance with the breed standard, and not specifically for the pet or commercial market.*<sup>116</sup>

The State and Territory codes vary considerably in volume and detail. Each of the codes contains regulations including codes guiding members in relation to the various dog sports, their relationship with the association and around breeding. Detail in relation to breeding and selling obligations in each State and Territory code is set out in Appendix 3. This appendix also provides detail of the clauses contained in each code that dissuades members from breeding for the commercial market. Members who breach the code can be disciplined, with a range of penalties including a reprimand, suspension of membership for a specific period, expulsion of membership and lifetime suspension of membership.<sup>117</sup>

#### 2.2.2 Dog Selling

The State and Territory industry-based codes and the *National Code of Ethics of Responsible Dog Ownership* include rules that relate to the sale or disposal of dogs. Appendix 3 lists the current State and Territory canine association codes.

As the Victorian State based code has been considered in some detail in an earlier part of this Chapter and because Dogs Victoria has one of the most up to date industry-based codes, these two codes are now compared. Figure 2 below provides a comparison of clauses and this is expanded upon in the discussion that follows below.

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<sup>116</sup> Ibid.

<sup>117</sup> Dogs Victoria, 'VCA Penalty Guidelines' (2017) <<https://dogsvictoria.org.au/uploads/Penalty%20Guidelines.pdf>>.

Industry Code Victorian Canine Association Inc Regulations and Code of Breeding	State Code Victorian Code of Practice for the Operation of Breeding and Rearing Businesses
Breeding Codes Part 20	Animal Records Clause 4 (3)
Breeding Records Clause 4 (3)	Sale of Animals Clause 5
Animal Records Clause 20.1.22	Information required when animal sold Clause 5
Information required when animal sold Clause 20.1.23	Guarantee Clause 5(1)
Required breeders to engage in ethical breeding practices and not to transfer puppies under 8 weeks of age. Requires breeders to ensure that persons acquiring their dogs understand requirements for care, welfare and responsible ownership and that they have time and the facilities, e.g. adequate fencing, sufficient room and proper shelter to fulfil their requirements	Requires the establishment of treatment records that include name, microchip number, sex, breed, date of birth, distinguishing features, home pen location, dam and sire details, complete health record including worming, vaccinations, desexing, contact details for purchaser
Requires breeders to keep proper records of their breeding activities that must be open for inspection by a management committee. Requires breeders to provide all records when requested to do so. Failure to keep records can lead to a suspension or disqualification of member privileges	Requires that all animals being sold must be accompanied when sold with a health declaration including details of any known physical abnormalities that might affect the short and long term health of the dog and microchip details. Provides that animals cannot leave the business before 8 weeks of age. Seller must provide literature about feeding, desexing, parasite control
Required breeders to create a record for each puppy and maintain it until ownership changes or the dog dies. Must be available for inspection and kept for a minimum of 3 years after last entry. Must include name, microchip, sex, breed, date of birth, colour and markings, dam and sire and registration numbers, health history, purchase, disposal record, name and contact details of purchaser, health declarations and record of return	Seller must provide literature about feeding, desexing, parasite control, health and procedures for emergencies during guarantee period, housing, responsible ownership, vaccination and training
Breeders shall provide purchasers with written details of: breed characteristics, vaccination records, responsible dog information, documentation required by Dogs Victoria, record of parasite control, record of microchip, desexing certificate and a written health declaration, including information on any known abnormalities at the time of sale and how it may affect future health and welfare of the dog, this must be in the form of a signed acknowledgement by the recipient	Provides a purchaser the right to return a puppy and receive a refund. If the puppy returned within 3 business days without a supporting letter of cause from a vet a 75% refund is payable by the seller. If the animal is returned within 21 days with a supporting letter from a vet a 100% refund is required.

*Figure 2 - A Comparison of Selling Requirements in the Victorian Industry and State Breeding Codes*

The industry code contains four clauses that mandate the keeping of industry records and industry code contains approximately ten clauses that set out requirements around the sale of puppies. A number of the obligations set out in this industry code are similar to those set out in the State code, such as: that puppies must not be sold under eight weeks of age; and that the breeder must provide to the purchasers at the time of sale written details of the breed characteristics, vaccination records, responsible dog ownership and registration paperwork. Another similarity between the industry and State codes is in relation to the health of puppies sold. Both codes contain clauses that oblige the business or the breeder to inform the buyer of any known health issue or disability that they are aware of at the time of the sale. The Victorian State code requires the business to sign a health declaration, and the industry code requires the breeder to obtain from the buyer a written and signed acknowledgement of the condition of the dog.<sup>118</sup>

<sup>118</sup> *Code of Practice for the Operation of Breeding and Rearing Businesses 2014* (Vic), page 20 and *Dogs Victoria Regulations, Codes, Policies & Procedures* (Code - Part 20.1), 15 June 2017, clause 20.1.15.



What is different is the onus on the breeder in relation to the provision of other information, with the industry code imposing a higher standard. The State code mandates the provision of literature about dog health etc. whereas this industry code requires the breeder to ensure that any buyer actually understands the requirements:

*20.1.20 - A member shall ensure that persons acquiring dogs from that member understand the requirements for the care, welfare and responsible ownership of the dog, and that they have the time and facilities, e.g. adequate fences, sufficient room and proper shelter, to fulfil their responsibilities.*

Both State and industry-based codes also make it clear that compliance with the codes does not remove the need to comply with animal welfare, anti-cruelty and companion animal legislation. For example, the State based code in NSW recognises that:

*This code is neither a complete manual on animal husbandry, nor a static document. It will be revised from time to time to take into account new knowledge of animal physiology and behaviour, technological advances, developments in standards of animal welfare and changing community attitudes and expectations about the humane treatment of animals.*<sup>119</sup>

The industry-based code in NSW also states that:

*A member commits to compliance with both the Prevention of Cruelty Animals Act (1979) and the Companions Animals Act (1998) and their regulated Regulations as well as to the NSW Animal Welfare Code of Practice – Breeding Dogs and Cats.*<sup>120</sup>

The industry code in Victoria also provides that member shall not sell or dispose of dogs in commercial pet wholesalers or retail pet shops unless they are accredited by the Victorian Canine Association Inc. and the Pet Industry Association of Australia Limited (PIAA).

One issue to be considered in this research is whether the codes of ethics and breeding codes established by the ANKC and the State and Territory canine bodies can assist in improving breeding practices and play a role in improving the health of pure breed dogs.<sup>121</sup>

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<sup>119</sup> *Animal Welfare Code of Practice - Breeding Dogs and Cats 2009 (NSW)*, page 1.

<sup>120</sup> *Dogs NSW Regulations Part XIII Code of Ethics 2015*, clause 4.

<sup>121</sup> PD McGreevy and F W Nicholas, 'Some Practical Solutions to Welfare Problems in Dog Breeding ' (1999) 8 *Animal Welfare* 329 Jerold S Bell, 'Researcher Responsibilities and Genetic Counseling for Pure-Bred Dog

The ANKC acknowledges on its webpage that there is a need to continue improving the outcomes for pedigree dogs in Australia and the State and Territory canine associations claim they are active in ensuring that their members breed their dogs in accordance with codes of ethics and breeding.<sup>122</sup> The reality is that without powers to inspect and monitor compliance with the code, there is nothing to guarantee compliance. ANKC members are from time to time exposed for breeding practices in breach of both the state legislation and their relevant code of breeding conduct.<sup>123</sup> The role, effectiveness and accountability of the ANKC is examined by this research in Chapter 8, as is breeder's awareness of their regulatory obligations when they breed.

### 3. Case Law Analysis

#### 3.1 Introduction

As dog breeding is a focus of this research it is important to examine the case law around commercial and hobby dog breeding. Dog selling is also a focus, and the case law that involved the selling of dogs is also considered here.

#### 3.2 Dog Breeding

As has been set out in Appendix 1, search terms were used in the case law analysis to identify dog breeding cases.<sup>124</sup> The case analysis brought up 26 cases that involved applications for dog breeding or dog boarding and or grooming facilities. Of these, nine were decided in the last ten years. Three relate to Greyhound facilities so these have been excluded in accordance with the

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Populations' (2011) 189(2) *Veterinary Journal* 234 and P D McGreevy and P C Bennett, 'Challenges and Paradoxes in the Companion-animal Niche' (2010) 19(1) *Animal Welfare* 11.

<sup>122</sup> Australian National Kennel Council Limited, *Improving Outcomes for Pedigree Dogs in Australia* (2015) <<http://ankc.org.au/HealthAndWelfare/?id=1100>>, Dogs NSW, 'Noticeboard' (Media Release, 23 March 2015) <http://www.dogsnsw.org.au/members/noticeboard/822-dogs-nsw-media-release.html> and Dogs Victoria, *Advantages of Purebred Dogs* (2015) <<http://www.dogsvictoria.org.au/AboutUs/Polycystatements.aspx>>

<sup>123</sup> Brigid O'Connell and Jack Paynter, 'Show Dog Shame - 120 Animals Seized by Police and RSPCA', *Herald Sun* (Melbourne), 9 June 2016 and Animals Australia, *How Big is the Puppy Factory Problem?* (2017) <<http://www.animalsaustralia.org/features/puppy-factory-problem.php>>.

<sup>124</sup> Search terms such as 'dog' and 'breeding', 'breeding facility' and 'commercial dog breeding'.

limitation to the scope of this research set out in Part IV of Chapter 11. The other six cases are discussed here.

Both of the cases, decided in 2007, involved appeals against a local council decision to refuse a development application in New South Wales for a permit to erect and operate a dog breeding establishment or facility. Both centred chiefly on the noise impacts of the proposed breeding establishments.<sup>125</sup> Dog breeding was noted by the New South Wales Land and Environment Court to be a permissible agricultural pursuit. In both cases the Court upheld the Applicants' appeal, approving the erection of breeding facilities for 60 dogs and 92 dogs respectively, subject to a set of conditions, including the implementation of effective acoustic measures.<sup>126</sup>

The first of the cases decided in 2011, *Attard v Moorabool SC* [2011] VCAT 1324, also involved an application for a permit to construct a dog breeding facility, this time for 100 dogs. This case is of interest as Oscar Law Inc., an association incorporated under the *Associations Incorporation Act 1981* (Vic)<sup>127</sup>, sought standing to challenge the granting of the permit on animal welfare grounds. The Victorian Civil and Administrative Tribunal confirmed that the purposes of the *Planning and Environment Act 1987* (Vic) are broad:

*They encourage public participation within limits and it often assists for like-minded citizens to form associations to present organised viewpoints. Decisions are based on the concept of net community benefit. Oscar's Law.s' grounds make it clear that commercial dog breeding facilities affect its interests. Hence it is indirectly affected and may legitimately object.*<sup>128</sup>

The second of the cases decided in 2011, *Rogers v Clarence Valley Council* [2011] NSWLEC 134,<sup>129</sup> is also of interest as it considers the meaning of 'commercial dog breeding'. This case concerned an action taken against a local council in New South Wales. The Applicant Sally Rogers

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<sup>125</sup> *Ghassibe J and Anor v Wingecarribee Shire Council* [2007] NSWLEC 431 and *Bellbay v Hawkesbury City Council* [2007] NSWLEC 723.

<sup>126</sup> *Ghassibe J and Anor v Wingecarribee Shire Council* [2007] NSWLEC 431, paragraph 41.

<sup>127</sup> *Associations Incorporations Act 1981* (Vic)

<sup>128</sup> *Attard v Moorabool SC* [2011] VCAT 1324, paragraph 22.

<sup>129</sup> *Rogers v Clarence Valley Council* [2011] NSWLEC 134

was the president and manager of an incorporated association, Happy Paws Haven Inc. that operated a private dog and cat shelter. She was granted development approval to care for up to 6 dogs. Sometime later the Council issued an order pursuant to the *Environmental Planning and Assessment Act 1979* (NSW) requiring the Applicant to cease using the premises in contravention of the condition to only care for up to 6 domestic dogs. The Applicant commenced proceedings in the Land and Environment Court of New South Wales, arguing that as she was not operating a commercial dog breeding establishment, what she was doing was a permissible agricultural pursuit that did not require development consent. The Court considered what ‘agriculture’ meant and confirmed that according to the Environmental Planning and Assessment Model Provisions 1980 it meant ‘*the use of land for any purpose of husbandry, including the keeping or breeding of livestock*’.<sup>130</sup>

The Applicant submitted that ‘livestock’ included dogs and cats and she argued that the keeping of dogs was agricultural. She provided evidence that she did not operate a *commercial dog breeding and kenneling facility* in that she was not paid to board dogs, and while those who adopted the dogs she fostered made a voluntary donation, they did not pay a price for the dogs.

The Council did not dispute that the dogs are included in the term ‘livestock’. They argued that despite this, a development application approval was necessary as what was taking place was commercial dog breeding and kenneling in the broader sense. They argued that although Happy Paws Haven’s operation was not carried out for the purpose of profit, the ordinary meaning of the word ‘*commercial*’ appropriately described what the Applicant was doing, as she had a large number of dogs in her care, and it was not appropriate just to focus on her motive for the pursuit of these activities.<sup>131</sup> The Court disagreed with the Council and found in favour of the Applicant.

*The advertising of those dogs that are suitable for adoption as being available for adoption on either Happy Paws Haven’s own or other pet rescue websites does not make Happy Paws Haven’s operation commercial. The advertising is not done in order to engage in trade or commerce by selling dogs which it has bred or kennelled. Rather, it is done in furtherance*

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<sup>130</sup> Ibid, paragraph 29.

<sup>131</sup> Ibid, paragraph 48.

*of the animal welfare objective of finding persons who are prepared to adopt the surrendered, abandoned or rescued dog and provide it with an appropriate home.*

The case decided in 2013, *Morrison t/as- Playhouse Pet Motel v Lake Macquarie City Council* [2013] NSWLEC 1162 was one that considered a council's refusal to grant an increase in numbers to a dog boarding facility. The Court found that the Applicant had adequately addressed noise concerns so the application to increase numbers was granted. The Court found that modifications that were made by the Applicant achieved a *satisfactory environmental outcome* by addressing the issue of barking dogs that were of concern to the neighbours.<sup>132</sup> The case of *Leichhardt Municipal Council v Gemser Holdings Pty Ltd* [2014] NSWLEC 161 involved an application by a council for an order restraining the Respondents from using premises at a pet shop without development consent in contravention of the *Environmental Planning and Assessment Act 1979* (NSW).<sup>133</sup>

In summary, these 6 cases are illustrative of approaches taken by Councils to applications made to breed dogs. Both the cases of *Attard v Moorabool SC* [2011] VCAT 1324 where the Court gave an animal welfare group standing and *Rogers v Clarence Valley Council* [2011] NSWLEC 134, where the Court allowed a rescue group to operate without the need for a full development application show that courts are prepared to recognise animal welfare considerations in the broader sense, not only as they relate to the welfare of individual dogs.

### 3.3 Dog Selling by ANKC Breeders

As has been set out in Appendix 1, search terms were used to capture cases that involved the advertising and or selling of sick or defective puppies.<sup>134</sup> The search revealed 13 cases and all but one of these cases have been examined in some detail in Part II of this Chapter. Ten of these cases have been identified as involving a breeder who was at the time of the case, registered with one of the State or Territory canine associations. Table 1 below lists the cases that concerned a registered ANKC breeder. As the cases used breach of contract and/or consumer

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<sup>132</sup> *Morrison t/as Playhouse Pet Motel v Lake Macquarie City Council* [2013] NSWLEC 1162, paragraph 19.

<sup>133</sup> *Environmental Planning and Assessment Act 1979* (NSW), specifically s76A.

<sup>134</sup> Seven other cases were found that involved dog show regulation.

law as the cause of action it is interesting to note that of the 10 cases against registered breeders four refer directly to aspects with the various industry codes of breeding/codes of ethics used by the State and Territory canine associations.<sup>135</sup>

*Table 1 - Australian Legal Cases that involve ANKC Registered Breeders*

Case Name	Breed of dog	Registered Breeder?	Code referred?
<i>Knowles v Atkinson (General)</i> [2002] NSWCTTT 224	Golden Retriever	Yes	
<i>Lee v Zalac</i> [2003] NSWCTTT 362	Labrador	Yes	Yes <sup>136</sup>
<i>Anderson v Zalac t/as- Tuxzat Kennels (General)</i> [2003] NSWCTTT 580	Staffordshire Terrier	No	No
<i>Dodge v Rockey (General)</i> [2005] NSWCTTT	Border Collie	Yes	Yes <sup>137</sup>
<i>Desmond v Stopp (General)</i> NSWCTTT 383	Bull Terrier	Yes	
<i>Jones v Planhaven Kennels (General)</i> [2009] NSWCTTT 566	Newfoundland	Yes	
<i>Scardoni &amp; Davis (Civil Dispute)</i> [2013] ACAT 35	Beagle	Yes	Yes <sup>138</sup>
<i>Allen v O'Loughlin</i> [2014] NSWCATCD 21	Great Dane	Yes	
<i>Sobol v Planhaven Kennels (General)</i> 2011 [2011] NSWCTTT 144	Newfoundland	Yes	
<i>Gardner v James (Civil Claims)</i> [2015] VCAT 169	Staffordshire Bull Terrier	Yes	Yes <sup>139</sup>

<sup>135</sup> The details of these codes are set out in Appendix 3.

<sup>136</sup> *Lee v Zalac* [2003] NSWCTTT 362, paragraph 11 in the determination - The Royal NSW Canine Council's Code of Ethics adopted 6/95 Amended February 2000. In paragraph 17 – 17 the Applicant *claims she was misled and deceived by Mr and Ms Zalac's website which falsely claimed that all ancestry had been hip X-rayed etc. and that their pups were genetically sound. Mr Zalac personally led me to believe that they were reputable breeders, who were registered with the Canine Council and adhered to the Canine Council Code of Ethics, which were ignored by them.*

<sup>137</sup> *Dodge v Rockey (General)* [2005] NSWCTTT 440, D Sheehan, Member of the Consumer Trader & Tenancy Tribunal stated in his reason for decision '*the applicants also asked the Tribunal to comment upon the statement in the Canine Council Code of Ethics: "Members, who are breeders, shall strive to eliminate hereditary diseases within their breed."* D Sheehan decided that it was not appropriate to comment upon a matter upon which no finding is made.

<sup>138</sup> *Scardoni v Davis* [2013] ACAT 35, paragraph 37 '*The Tribunal has carefully considered all of the evidence before it, including the documentary evidence. The Applicant said that the Respondents had told her on 23 December 2012 that the puppies were 8 weeks old; she had agreed to purchase an 8-week-old puppy from them and from seeing the dates on Tomi's veterinary records showing his date of birth as 8 November 2012 combined with her vet's concern that he seemed underage, she believed that Tomi was under age when sold. This is contrary to the NSW Breeder's Code for selling puppies.*'

<sup>139</sup> *Gardner v James* [2015] VCAT 169, paragraph 16. *Much was made of the fact that Mrs James allowed the Gardner's to take the dog at the age of six weeks. Mrs Gardner stated that it was in contravention of the Dogs*

In *Lee v Zalac* [2003] NSWCTTT 362 the Tribunal noted that the industry breeding code was not enforceable, but despite this the Tribunal did have regard to it in the context of the case. In this case the breeder was ordered to return \$200 to a puppy buyer as she charged that amount for pedigree papers in breach of the industry code, which required breeders to supply the pedigree/registration paperwork to the new owner as part of the sale. This meant the breeder should not have charged any extra amount for supplying pedigree papers.<sup>140</sup> Tribunal Member K Leotta determined:

*... that the Respondent is in breach of the Code of Ethics by her charge of \$200.00 for pedigree papers.*<sup>141</sup>

It is unclear in *Lee v Zalac* [2003] NSWCTTT 362 if the Tribunal was implying that adherence to the industry breeding code was a term of the contract for sale. It was interesting that the Tribunal was prepared to fine the breeder for noncompliance with the breeding code and it was the only case that was found that referred directly to breeders' obligations to provide paperwork to buyers of pure breed dogs in accordance with the State and Territory breeding codes.

One of the most interesting findings that came from these cases was made in the 2014 case *Allen v O'Loughlin* [2014] NSWCATCD 21. The facts of the case have been set out previously but essentially a Great Dane puppy died as a result of being born with a hereditary condition which considerably reduced its lifespan. The NSW Civil and Administrative Tribunal found that although the Respondent was a registered breeder of Great Danes, they bred as a hobby only and not as a business. The Tribunal determined that the sale of the puppy was not in trade or commerce and that the supply of the puppy had not been in the course of carrying on a business to supply puppies, so the sale of the puppy did not fall within the definition of a consumer claim pursuant

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*Victoria Code of Conduct. I did not have to decide whether it was a breach of the Code or if Mrs James was bound by the Code. This was because it was conceded by Mrs Gardner that the taking at six weeks was not causal of the dog's condition, which she says is a congenital brain condition.*

<sup>140</sup> *Lee v Zalac* [2003] NSWCTT 362 Paragraph 1. I find that the Respondent is in breach of the Code of Ethics by her charge of \$200.00 for pedigree papers.

<sup>141</sup> *Ibid*, determination 1.

to the *Consumer Claims Act 1988* (NSW). This case was in direct conflict with the early case of *Dodge v Rockey (General)* [2005] NSWCTTT, where a registered Border Collie breeder who again was only a hobby breeder was ordered to pay compensation to a puppy buyer when the puppy developed a hidden defect, one that this careful breeder could not at the time test for and an illness that was so rare at the time that only one or 2 other puppies in the country had been diagnosed with it.<sup>142</sup>

#### 4. Motivations of Dog Breeders

There is a body of case law that indicates that the courts and tribunals will have regard to the intention of the parties in making their determinations. This research found three cases that shed some light on the motivations of dog breeders and it is recognised that their motivations actually play a role in the outcome of the cases. An examination of the motivations referred to in three cases follows.<sup>143</sup>

The first case is the case of *Guilfoyle v Newman* [2004] QDC 213<sup>144</sup>. This case and the subsequent case about costs pursuant to r292 of the *Uniform Civil Procedure Rules 1999* (QLD) centred on the possession of a St Bernard show dog.<sup>145</sup> After a breakdown of a friendship that had existed and the showing of the dog in joint names pursuant to a partnership agreement both parties wanted possession of the St Bernard dog and the matter proceeded to court. The breeder argued that she and her co-owner did not have a partnership as defined in the *Partnership Act 1891* (Qld),<sup>146</sup> as the parties were not seeking to gain profit. For a partnership at law to exist this

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<sup>142</sup> *Dodge v Rockey (General)* [2005] NSWCTT 440 and *Allen v O'Loughlin* [2014] NSWCATCD 21.

<sup>143</sup> This is then built on in Chapter 9 when the analysis of the breeder survey takes place to answer research question 4 B – *what motivates breeders?*

<sup>144</sup> *Guilfoyle v Newman* [2004] QDC 213.

<sup>145</sup> *Uniform Civil Procedures Rules 1999* (Qld), r292.

<sup>146</sup> *Partnership Act 1891* (Qld).



Act states: '*That the receipt by a person of the profits of a business is prima facie evidence that the person is a partner in the business.*'<sup>147</sup>

The breeder claimed instead that they were breeding and showing the dog to advance the breed and that what really existed was a bailment arrangement, that the dog always remained her property and that the defendants were bailees and as such had to return the dog when she asked for it to be returned.<sup>148</sup> The judge found however that there could have been either a partnership or joint venture between the parties, such that the breeder was unsuccessful in her claim to have the dog returned to her and she was also ordered to pay costs of the application. Evidence was presented that confirmed that both parties enjoyed owning a successful show dog and that they had entered into the agreement that allowed the defendant to show the dog pursuant to the rules of the Queensland Canine Control Council.

The plaintiff was a breeder of St Bernard dogs and the attainment of a 'grand champion' title was of benefit to her. The plaintiff claimed that for her dog showing and breeding was not about profit making but about advancing the breed. The defendants however argued that the benefit to the plaintiff was more financial as *the 'prospect of puppies from a "grand champion"' is also a desirable matter* to a professional breeder. The court found that a partnership agreement could exist as the defendant were paying to care for the dog and to show her and that both beneficially from the arrangement, the defendant had the dog to show and the plaintiff reputation, in breeding and co owning a 'grand champion' was beneficial to her.<sup>149</sup> This case suggests that what motivates the breeder was breed enhancement.

The second case is *Ackland v Watt (Civil Claims)* [2010] VCAT 1629. In this case the Tribunal member dealt with possession and ownership of a male Chihuahua breed by Ms Watt but who was living with and being shown by Ms Ackland. In this case the Tribunal reflected on the fact

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<sup>147</sup> Ibid, section 6 (1) (b).

<sup>148</sup> Although not specifically argued in this case, such a motivation is in line with the clause contained in the Queensland industry breeding code which asks members to "*breed only for the purpose of improving the standard of the breed.*" See Appendix 3.

<sup>149</sup> *Guilfoyle v Newman* [2004] QDC 213, paragraph 11.

that the co-owners of the dog in question were not partners in a genuine business sense. The Respondent was a non-commercial hobby breeder and showman of the Chihuahua breed who did not operate a kennel as a profit-making enterprise. The parties had a written partnership agreement, but it did not include adequate detail in relation to ownership of the dog on termination in the manner that took place on the facts. The Tribunal made a decision based on what it thought to be objectively fair. Given that the dog had lived with the Applicant Ms Ackland who showed him and cared for him for three years and not with the Respondent Breeder, the Tribunal awarded ownership to the Applicant.<sup>150</sup> This case noted that for the breeder, she breeds dogs as a 'serious hobby breeder' and allowing others to possess and show her dogs enhances her reputation as a breeder of Chihuahuas and that she breeds not for money but because she enjoys being a successful Chihuahua breeder. What motivates this breeder is the enjoyment of breeding, showing and being known as a successful breeder.

In the third case, the appeal case of *Harvey v Davis* [2014] QCATA 131, the Applicant sought to argue that the Queensland Civil and Administrative Tribunal had no jurisdiction to order that an Afghan Hound be returned to its breeder, the Respondent. The Applicant argued that as the Respondent was not a trader, so the Tribunal had no jurisdiction to hear the dispute. The initial Tribunal confirmed it had jurisdiction to hear claims arising out of a contract between a consumer and a trader.<sup>151</sup> On appeal there was no dispute that the Respondent supplied goods, but the question was whether she did so in trade or commerce in 2009. The Respondent told the Magistrate that she bred dogs as a hobby and she believed that people who made money out of dog breeding did the wrong thing. The arrangement between the parties was one between friends and the Respondent told the Magistrate that she was '*semi-retired from dog showing*' so she wouldn't be making any money from dog breeding. The Applicant agreed that she considered dog breeding to be a hobby, albeit one from which money can be made. This being the case the Appeal Tribunal noted that the initial Tribunal did not have jurisdiction to hear the

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<sup>150</sup> *Ackland v Watt* [2010] VCAT 1629 Paragraphs 28 and 41 in the determination.

<sup>151</sup> *Queensland Civil and Administrative Tribunal Act 2009* (Qld) Section 8 A trader—(a) means a person who in trade or commerce—(i) carries on a business of supplying goods or providing services; or(ii) regularly holds himself, herself or itself out as ready to supply goods or to provide services of a similar nature.

case and as such the appeal was granted.<sup>152</sup> This case provides support for the position taken in the case of *Allen v O'Loughlin* [2014] NSWCATCD 21, that concluded that those in the hobby of dog breeding are not subject to the guarantees set out in the ACL. In this case the breeder revealed that dog breeders can make money, but it was her opinion that dog breeders should breed as a hobby and that '*people who make money out of dog breeding do the wrong thing*'.<sup>153</sup> For this breeder her motivation seems to be the joy of engaging in a hobby.

These cases reveal that for these breeders, they are not motivated by money but rather because they enjoy the hobby of breeding and one bred because she wanted to advance the breed that she loved. These cases were instructional. It can be seen that tribunals will consider the motives of breeders when deciding cases. If breeders are deemed to be traders, that is involved in a business with the intention to make a profit they are subject to both consumer law and partnership law. If that is not their intention this law may not apply. This research intends to take this further by investigating in more depth both what motivates breeders and what dog owners want when they acquire a dog. This and dog owner's thoughts around commercial breeding is addressed by the fourth research component which is considered in Chapter 9.

## PART VI. CONCLUSION

This Chapter has provided an overview of the four components of the regulatory framework regulating dog breeding in Australia. Dogs are property that can be purchased, sold and bred. This framework enables dog owners to protect their rights and interests over their dogs, subject to the provision to this sentient property of certain basic rights. Dog owners are also required by this regulatory framework to ensure that their dogs do not become a nuisance to neighbours and the wider community. Those that breed dogs are subject to this regulatory framework and to codes of breeding practice that exist at State level in two States and at industry level in all States and Territories for members of registered breeder associations.

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<sup>152</sup> *Harvey v Davis* [2014] QCATA 131 paragraphs 11 – 15.

<sup>153</sup> *Ibid*, paragraph 8.

This Chapter examined the case law that exists around dog breeding and the rights of those that purchase puppies from breeders. This analysis has revealed that the law does offer some protection to puppy buyers where they purchase a sick puppy from a commercial breeder where the illness or defect is one that is directly attributable to the puppy's breeding or care. The case law has suggested that hobby breeders, who do not breed commercially may not be made subject to the ACL. It also reveals that courts and tribunals are willing to consider the emotions involved in owning a sick dog when making their decisions and that the motivations and objectives of dog breeders play a role in the outcomes of cases.

The next Chapter in this thesis considers what issues exist in dog breeding in Australia and critiques the regulatory framework that has been outlined in this Chapter. It considers which of the issues that are highlighted through an examination of relevant literature and other appropriate documentation might be addressed by changing or improving aspects of the current regulatory framework.

## CHAPTER 3: ISSUES AND CRITIQUE OF THE CURRENT REGULATORY FRAMEWORK

### PART I. INTRODUCTION

Over the last 30 years there has been enormous growth in research in the areas of animal law, animal welfare and animal management. The literature includes terms such as ‘animal rights’; (which concerns minimising or eradicating the use of human animals by humans) and ‘animal welfare’ (which focuses chiefly on the humane treatment of animals). Animal law is a concept that can embrace both animal rights and animal welfare aspects and there is often substantial crossover in the literature. Those looking at animal welfare, for example, might also examine animal rights, effective animal management or animal health issues at the same time. This Chapter focuses on that component of the literature that is specifically relevant to the dogs within our community and then more specifically in relation to the breeding of dogs. This is done to identify the issues that have been identified with the current regulatory environment.

The second aim of this research is to identify the current regulatory and legal issues, health issues and stakeholder issues in dog breeding that impact on dog welfare and on the rights of companion dog owners. It is therefore necessary to undertake an extensive, systematic and explicit literature search and critique. This required the collection, consideration and critiquing of literature that has considered: dog welfare; dog management; dog health/behaviour; dogs as property; dogs as accessories and dog breeding. To ensure that this research reflects the current position of dog breeding in Australia and the current societal position on dog breeding, newspaper articles, industry literature and the webpages of animal welfare and advocacy groups and State and Federal departments have also been considered.

The first research component seeks to understand the major issues facing dog breeding in Australia. To do this, this Chapter identifies the issues raised in that literature, critiques the current regulatory framework and looks at a range of developments that have been made in other jurisdictions.

Literature was sourced through several data bases using a number of search terms. These search terms were:

Dog Welfare/ Canine Welfare	Dog Management/ Canine Management	Dog Health / Canine Health	“Dog” and “Health”
Dog Behaviour / Canine Behaviour	“Dog” and “Property”	“Dog and “Accessory”	Dog breeding, “Dog” and “Breed”
“Dog” and “Law”	“Dog” and “Regulation”	“Commercial Dog Breeding”	“Dog” and “Genetic”

All literature that was found was saved into Endnote, a software application that assists with managing references. All articles were read manually and summarised to provide the structure for this Chapter. Part II of this Chapter provides a review of this literature as it assists in identifying the issues that exist in dog breeding. Such review assists to critique the deficiencies in the current regulatory framework.

## PART II. ISSUES IN DOG BREEDING

### 1. Introduction

This part of this Chapter critiques and analyses the literature that discloses the issues that exist in dog breeding. This is an essential precursor to a consideration of the research question and its components as set out in Part IV of Chapter 1 and below in Part II of Chapter 5.

The relative ease in which dogs can be produced and sold can cause issues for dogs, for owners, for dog advocates, for welfare groups, for society and of course for those tasked with ensuring that all dogs receive appropriate care and welfare.<sup>1</sup>

This research groups the issues that emerge from the literature into four sub-groups:

1. Legal and Regulatory Issues;
2. Consumer Protection Issues;
3. Canine Welfare and Health Issues; and

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<sup>1</sup> Sheila Crispin, 'The Advisory Council on the Welfare Issues of Dog Breeding' (2011) 189(2) *Veterinary Journal* 129, 129.

#### 4. Stakeholder Issues

Some of the issues that exist in dog breeding have received the attention of welfare groups, the media and canine associations and governments. Other issues have not received as much attention. This research considers all the issues that have been identified but notes that not all issues in dog breeding can or should be addressed by regulation. Regulation does however have a role in addressing legal and social issues.

## 2. Legal and Regulatory Issues

### 2.1 Dog Welfare

Given the importance of companion animals, it is not surprising that there is an array of literature that considers animal welfare. As humans learn more about non-human animals, more is learnt about what they need. There has been a contention for many years in jurisdictions such as the UK, Australia, Canada and the USA that it is the task of government to establish a regulatory framework that ensures animals are treated humanely.<sup>2</sup>

It is vital to provide within any regulatory framework a robust definition of animal welfare, one that is capable of being understood. For such a framework to support animals effectively, it needs to be clear what animals need in terms of their welfare, how an animal's welfare can be measured and a way to agree on what an animal's state of welfare should be in its context. An effective regulatory framework needs to provide clear guidance as to what the term '*animal welfare*' means and how it can be achieved for different types of animals.

The term '*animal welfare*' has been defined in the Glossary but it is recognised that this definition may not be universally accepted as the term can mean different things to different people and, a number of frameworks exist for assessing animal welfare.<sup>3</sup> There has been consideration of what such frameworks should encompass for over 40 years with the earliest

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<sup>2</sup> Mike Radford, *Animal Welfare Law in Britain: Regulation and Responsiveness* (Oxford University Press 2001), 4.

<sup>3</sup> Caroline J Hewson, 'What is Animal Welfare? Common Definitions and their Practical Consequences' (2003) 44 (June) *The Canadian Veterinary journal. La revue vétérinaire canadienne* 496, 496, Caroline J Hewson, 'Can We Assess Welfare?' (2003) 44(9) *Canadian Veterinary Journal* 749 and Bernard E Rollin, 'Animal Rights as a Mainstream Phenomenon' (2011) 1(1) *Animals* 102, 106.

considering animal welfare in terms of an animal's body and physical environment. One such framework is the United Kingdom Farm Animal Council's Five Freedoms.<sup>4</sup> These Five Freedoms have long been regarded as a statement of fundamental principles in animal welfare at an international level.<sup>5</sup> Although they do not provide detailed guidance on how to treat and care for animals, they have been included in some animal welfare legislation and are considered by groups such as the RSPCA in Australia as a basis from which to consider the welfare of an animal.<sup>6</sup> The five freedoms state that all animals should be free from hunger and thirst, free from discomfort, pain, injury and disease, free to express normal behaviour and free from fear and distress. These criteria are animal-centred and aim at assessing an animal's experience of its own situation.<sup>7</sup> Other frameworks use physiological measures from the animal welfare science literature, such as endorphins, plasma cortisol, and heart rate to examine how an animal is coping.<sup>8</sup> Such frameworks measure some aspects of welfare but ignore other aspects.

From both the veterinary ethics literature and the animal rights literature we see consideration of how to measure animal welfare. A number of general factors need to be taken into account in assessing the interests of animals. These factors include: capacity to experience pain; suffering and other forms of discomfort; capacity to experience pleasure and other positive mental states; capacity to experience or exhibit valuable emotions and character traits; self-awareness and interaction with human beings; an animal's nature and utilitarian considerations.<sup>9</sup> Animal welfare advocates have come to realise that determining what an acceptable state of animal

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<sup>4</sup> This suggests that all animals need to be free from – hunger and thirst, pain, disease and injury, discomfort (heat or cold due to inadequate shelter), fear and distress and free to perform natural behaviours. Farm Animal Welfare Council, 'Report on Priorities for Animal Welfare Research and Development' (1993) <<http://edepot.wur.nl/134980>>; Miah Gibson, 'The Universal Declaration of Animal Welfare' (2011) 16(2) (2011) *Deakin Law Review* 540, 541.

<sup>5</sup> Jessica Vapnek and Megan Chapman, 'Legislative and Regulatory Options for Animal Welfare' (Food and Agricultural Organization of the United Nations, 2010), 6.

<sup>6</sup> RSPCA Queensland, *The Five Freedoms* (2017) <<https://www.rspcaqld.org.au/who-we-are/five-freedoms>>.

<sup>7</sup> Vapnek and Chapman, above n 5, 8.

<sup>8</sup> Hewson, above n 3, 496.

<sup>9</sup> Rollin, above n 3, 107.



welfare in a given context requires consideration of all relevant factors including scientific evidence, economic, social and ethical issues.<sup>10</sup>

It is widely accepted in animal welfare literature and therefore applicable when considering dog welfare to note that mechanisms and methods to assess the welfare of a dog that are based purely on bodily measures may not be appropriate as most dogs in Australia are kept as companions. It is now accepted in animal welfare scientific literature that assessing animal welfare must consider both physical and psychological/emotional states. Assessment of dog welfare is no different. Hewson and others note that a dog may have perfect conformation and be in perfect health but may still be anxious in its environment.<sup>11</sup> Dogs are social creatures, but what each dog may require in terms of care may vary considerably, given their different physical and behavioural characteristics.<sup>12</sup>

It may be more appropriate to use mechanisms that define welfare, not only from the point of view of the animal, but that also assesses the quality of life being experienced by the dog by examining the appropriateness of the living conditions and care provided so that this can be considered in light of what is required by both industry and State based breeding codes.

As the role of dogs continues to be important in our community, and as scientific knowledge around dog welfare increases, so too will research that considers ways to improve dog welfare. It is vital that all regulation includes up to date, scientifically derived and consistent definitions of dog welfare. Those that draft both State and Territory and industry-based codes need to ensure that dog welfare is defined appropriately and that regulatees are aware of their obligations in terms of best dog welfare.

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<sup>10</sup> Xavier Averos et al, 'The Effect of Steps to Promote Higher Levels of Farm Animal Welfare Across the EU. Societal versus Scientists Perceptions of Animal Welfare' (2013) 3(3) *Animals* 786, 786 and Bernard E Rollin, 'The Inseparability of Science and Ethics in Animal Welfare' (2015) 28 *Journal of Environmental Ethics* 759, 760.

<sup>11</sup> Hewson, above n 3, 16.

<sup>12</sup> K J Stafford and D J Mellor, 'Assessing the Wellbeing and Quality of Life in Companion Animals' (Paper presented at the AAWS International Animal Welfare Conference, Gold Coast, Australia, 2008)  
<[http://www.daff.gov.au/\\_\\_data/assets/pdf\\_file/0008/1046573/49-kevin-stafford.pdf](http://www.daff.gov.au/__data/assets/pdf_file/0008/1046573/49-kevin-stafford.pdf)>.

## 2.2 Dogs as Property

There is growing animal law and animal welfare literature that questions the appropriateness of the legal status of animals as property, and of legislation that protects animals by virtue of this status. Much of this literature addresses the concerns that such a status does not always promote animal welfare.<sup>13</sup> Yet the legal position that animals are property permeates world jurisdictions.<sup>14</sup>

There is literature that challenges the notion of animals as consumables and considers whether any policy framework that allows animal industries to flourish can really embrace the sentience of animals.<sup>15</sup> Cooke challenges the legal notion of companion and farm animals as objects and examines the moral conflicts that exist when companion animals are viewed as property despite the reality that for a growing number of owners their pet is more than just a thing or piece of property.<sup>16</sup> As society continues to embrace the value of dogs in our community, the quantity of dog regulation increases, and obligations imposed on owners expands.<sup>17</sup>

The law recognises that although both inanimate objects and dogs are property, the obligations and rights that come with owning a dog are different from the obligations and rights that come from owning an inanimate thing.<sup>18</sup> The law recognises that certain property comes with attached

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<sup>13</sup> John McEldowney, Wyn Grant and Graham Medley, *The Regulation of Animal Health and Welfare, Science, Law and Policy* (Hoboken, Taylor and Francis 2013), 18.

<sup>14</sup> Lee J McConnell, 'Property Status and the Limited Impact of Welfare Legislation for Farm Animals' (2013) IX (May) *Journal of Animal Law & Natural Resource Law* 63 and I Boissevain, 'Can the Law Help us to Tackle Genetic Diseases that Affect the Welfare of Dogs?' (2012) 21(Journal Article) *Animal Welfare* 15122 and Mark Bekoff, 'Minding Animals: A Transdisciplinary Approach for Furthering Our Understanding of Animals in Society' (2010) 1(1) *Animals* 4,5 and Erica R Tatoian, 'Animals in the law: occupying a space between legal personhood and personal property' (2015) 31 *Journal of Environmental Law and Litigation* 147.

<sup>15</sup> Mindy Tommasina Miller, *Transnational Governance of Farmed Animal Welfare: A Critique of Animals as Commodities* (Master of Arts Thesis, Master Thesis, Colorado State University 2011), 1.

<sup>16</sup> Steve Cooke, 'Duties to Companion Animals' (2011) 17(3) *Res Publica* 261, 265 and McConnell, above n 14, 266.

<sup>17</sup> Fiona Borthwick, 'Governing Pets and Their Humans: Dogs and Companion Animals in New South Wales, 1966-98' (2009) 18(1) *Griffith Law Review* 185, 187.

<sup>18</sup> Cooke, above n 16, 266.

obligations. For example, there is an obligation to keep real property in a safe condition and to pay the required State and local council fees. The law is capable of creating different obligations that attach to ownership. In the case of a companion animal, the law in Australia provides the owner with the right to exclusively own the companion dog, including the right to dispose of it, affirming its property status. The reality that animals are different from inanimate property in that they have the capacity to suffer creates problems when trying to apply basic personal property laws to them.<sup>19</sup>

There is literature in a number of other jurisdictions that proposes that change to the concept of property is necessary to best protect the rights of animals, since it is the property status of animals that allows for their exploitation.<sup>20</sup> Huss argues that companion animals are so different from other types of personal property that they should not be considered as property. She argues that because so many owners view their dog or cat as a member of the family it is not appropriate to consider them in the same way as other property.<sup>21</sup> There is a push for companion animals to be given legal standing to bring claims.<sup>22</sup> In some countries changes of this nature have already been made. In Switzerland for example, the '*dignity of the creature*' was enshrined in the constitution in 1993 and in 2008 a completely revised *Animal Protection Act* came into effect. In 2005 a change in the Swiss legal system was made so that animals were no longer regarded as mere objects but beings with their own sentience that needed to be protected.<sup>23</sup>

*The changes that were made in Switzerland has made animal welfare a mainstream concern in the country. The legislation is backed up by the government conducting*

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<sup>19</sup> Lisa Marie Morrish, 'The Elephant in the Room: Detrimental Effects of Animal's Property Status on Standing in Animal Protection Cases ' (2014) 53 *Santa Clara Law Review* 1128, 1143.

<sup>20</sup> Sandra K Jones, 'Current Issues in Public Policy: Dealing Dogs: Can We Strengthen Weak Laws in the Dog Industry?' (2010) 7(3) *Rutgers Journal of Law & Public Policy* 442, 446.

<sup>21</sup> Rebecca J Huss, 'The Pervasive Nature of Animal Law: How the Law Impacts the Lives of People and their Animal Companions' (2009) 43(3) *Valparaiso University Law Review* 1131, 1136.

<sup>22</sup> Brooke J Bearup, 'Pets: Property and the Paradigm of Protection' (2007) 3 *Journal of Animal Law* 173, 272.

<sup>23</sup> Ibid.

*education and training people how handle animals and ensuring that the public is informed about animal welfare.*<sup>24</sup>

This is a long cry from the reality in Australia where the federal government has not played a role in animal welfare in any significant way for four years.

### 2.2.2 Conclusion

In Australia, the way forward may be to accept that dogs are property, in the sense that each dog has an owner, as it is through this ownership that dogs can be given the protection that they need. Favre, who challenges the law's view that animals are property, asserts that given that animals are currently accorded the rights to be free from cruelty and to be provided with basic rights to food and shelter, that policy makers can develop more coherent packages of animal rights. Favre and Bearup acknowledges that it is possible to challenge the traditional rules of property to accommodate the presence of a new category of property, that being '*living property*.'

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*Someday with enough persistence and tenacity, desire and drive, domesticated pets and other animals may acquire cognizable rights that they currently lack, to enjoy their time and place on Earth like humans.*<sup>26</sup>

## 2.3 Effectiveness of Breeding Codes

One of the approaches taken by governments and industry, to combat breeding that does not provide appropriate levels of welfare for dogs, has been to introduce breeding codes.<sup>27</sup> Such codes may be relatively easy to impose on regulated breeders who are already subject to codes of breeding mandated by their industry organisation, the Australian National Kennel Club Ltd (ANKC). What remains unclear is the effectiveness of both State and Territory imposed breeding

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<sup>24</sup> World Animal Protection, 'Swiss Confederation - Animal Protection Index' (2014) <[https://api.worldanimalprotection.org/sites/default/files/api\\_switzerland\\_report.pdf](https://api.worldanimalprotection.org/sites/default/files/api_switzerland_report.pdf)>.

<sup>25</sup> David Favre, 'Living Property: A New Status For Animals Within the Legal System' (2010) 93(Spring ) *Marquette Law Review* 1021, 1071.

<sup>26</sup> Bearup, above n 22, 191.

<sup>27</sup> There is currently a code to regulate breeders in NSW *Animal Welfare Code of Practice - Breeding Dogs and Cats 2009* (NSW) and Victoria *Code of Practice for the Operation of Breeding and Rearing Businesses 2014* (Vic).

codes and industry codes in improving conditions for dogs. It may be that, given little is done to enforce and monitor compliance, and that a significant amount of breeding takes place by breeders that are hard to locate and regulate, such codes are ineffective. There has been no consideration of the effectiveness and role of an association such as the ANKC in regulating breeding.

Most State and Territories have codes that cover dogs, but only two have codes that cover dog breeding. More detail in relation to the codes that apply to dogs and dog breeding have been considered in Chapter 2.

There is a small amount of academic literature dating back to the early 2000s such as the work done by Main and others in 2001 that examines the role of standards and codes in improving welfare outcomes for animals. This work suggests that for codes or standards to have genuine welfare outcomes for animals, they need to be written carefully and reviewed regularly.

Individuals or agencies that are required to enforce or monitor them need to be skilled in auditing animal welfare outcomes.<sup>28</sup> The work by Cooke that has been considered above did provide a commentary on the State breeding codes in South Australia, Victoria and New South Wales. She suggests that there are issues with the role that codes play as they are directed ‘to *either the breeding facilities themselves or the welfare of animals once they reach pets shops*’. She suggests that the lack of resources in animal welfare, the lack of codes in the remaining 5 States and Territories and the inconsistencies in the existing codes all contribute to the reality that codes have not eliminated or reduced welfare or dog overpopulation issues. Her work provides a good commentary but no empirical evidence that considers code effectiveness, nor does she consider industry codes or the reality that there are hobby breeders that are regulated by canine associations.

Work done by Morris in Canada in 2013 looks at the policies that promote socialisation and welfare in dog breeding. Within her work she notes the existence of the Canadian Kennel Club (CKC), a dog pedigree association, similar to the ANKC. The CKC has a code for members but that

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<sup>28</sup> D C J Main, A J F Webster and F Green, 'Animal Welfare Assessment in Farm Assurance Schemes' (2001) 51(Supplement 030) *Acta Agricultura Scandinavica* 108 .

the CKC inspects only breeding documentation and not breeding and '*has no internal auditing systems to monitor if recommendations made in the code of practice are being followed*'.<sup>29</sup> In Canada dog breeding is mostly an unregulated industry with only 6 provinces having any enforceable regulation with only one province with mandatory inspections and only 5 having annual licensing of dog breeders. Morris concludes that codes currently play a minimal role in improving welfare outcomes for dogs but notes the usefulness of both licensing and inspection of breeding premises to create breeder accountability.<sup>30</sup> She suggests the establishment of regulation to mandate these and as part of it the inclusion of a code for breeding as developed by the Canadian Veterinary Medical Association – *A Code of Practice for Canadian Kennel Operations*.<sup>31</sup>

## 2.4 Dog Management

### 2.4.1 Introduction

As animal ownership is common in Australia, and problems associated with animal management increase in urban communities, it is not surprising that there is a growing body of literature that looks at the issues created by the proximity of companion animals and humans. Some specifically examine dog management issues, including: the factors people consider when acquiring dogs;<sup>32</sup> the reasons why dogs are relinquished to shelters by owners and the human impact of such

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<sup>29</sup> Amy Morris, *Policies to Promote Socialization and Welfare in Dog Breeding* (Public Policy Thesis, Masters Thesis, Simon Fraser University 2013), 5.

<sup>30</sup> Ibid, 39.

<sup>31</sup> Canadian Veterinary Medical Association, 'A Code of Practice for Canadian Kennel Operations ' (2007).

<sup>32</sup> Emily Weiss et al, 'Why Did You Choose This Pet?: Adopters and Pet Selection Preferences in Five Animal Shelters in the United States' (2013) 2(2) *Animals* 144, Laurie Garrison and Emily Weiss, 'What Do People Want? Factors People Consider When Acquiring Dogs, the Complexity of the Choices They Make, and Implications for Nonhuman Animal Relocation Programs' (2015) 18(1) *Journal of Applied Animal Welfare Science* 57 and Christina Sietto, Iain M Fraser and Rob W Fraser, 'Investigating Some of the Factors That Influence "Consumer" Choice When Adopting a Shelter Dog in the United Kingdom' (2014) 17(2) *Journal of Applied Animal Welfare Science* 136.

relinquishment;<sup>33</sup> the management practices of shelters and pounds that rehome dogs;<sup>34</sup> the underlying psychological factors of dog owners that drive dog management behaviour;<sup>35</sup> why responsible dog owners may not always employ responsible ownership practices;<sup>36</sup> and the appropriateness of breed specific legislation to address dog attacks and ownership of dangerous dogs.<sup>37</sup>

The following topics are expanded here: lost, abandoned and seized dogs, including an examination of motivations and lack of consistency in approach by local councils; the issues with measuring and defining dog welfare; dog overpopulation and the notion of puppy provenance.

#### 2.4.2 Lost Abandoned and Seized Dogs

The law views dogs that have no homes as unwanted property, yet their disposal is not as straight forward as the disposal of an unwanted good. They cannot simply be abandoned or destroyed as the animal welfare and anti-cruelty components to our regulatory framework becomes relevant. Most dogs that are lost, abandoned or seized from owners who have committed cruelty end up being accommodated in shelters or pounds operated by the local council, the RSPCA or (to a lesser extent) privately funded animal shelters and rescue groups.

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<sup>33</sup> V I Rohlif et al, 'Why Do Even Committed Dog Owners Fail to Comply with Some Responsible Ownership Practices?' (2010) 23(2) *Anthrozoos: A Multidisciplinary Journal of the Interactions of People & Animals* 143, Mary E E Edwards, *Protective-Restoring to Maintain Self Integrity: A Grounded Theory of the Human Experience of Dog Relinquishment* (PhD Thesis, Edith Cowan University 2012) <<http://trove.nla.gov.au/version/187357521>> and Vanessa Ilse Rohlif, *Beliefs Underlying Dog Owner's Management Practices* (Doctor of Philosophy Thesis, PhD Thesis, Monash University 2013).

<sup>34</sup> Kate M Mornement et al, 'A Review of Behavioral Assessment Protocols used by Australian Animal Shelters to Determine the Adoption Suitability of Dogs' (2010) 13(4) *Journal of Applied Animal Welfare Science : JAAWS* 314.

<sup>35</sup> Keven J Kerswell et al, 'Self-Reported Comprehension Ratings of Dog Behavior by Owners of Adult Dogs' (2013) 26(1) *Anthrozoos: A Multidisciplinary Journal of the Interactions of People & Animals* 5 Rohlif, above n 33.

<sup>36</sup> Rohlif et al, above n 33, 31.

<sup>37</sup> Susan Rappaport, Kathleen Elmore, M and Megan O'Connor, '2013' 44(Fall) *University of Baltimore Law Forum* 60 and Megan Dziura, 'Should We Beware of Dog or Beware of Breed? An Economic Comparison' (2014) 10(2) *Journal of Law, Economics & Policy* 463.

There is no accurate way to determine nationally just how many dogs end up in these animal shelters or pounds as only the state of New South Wales keeps accurate statistics. It has been estimated that approximately 140 000 unwanted healthy dogs and cats are euthanased in animal welfare shelters or pounds.<sup>38</sup> There is no real know to know where these animals are coming from; the type of breed they are or how they have been bred. Currently it is left to the individual shelter or rescue centre to make in-house policies on rehoming.<sup>39</sup> Only the State of Victoria currently has a code that provides guidance about the keeping of dogs in shelters.<sup>40</sup> The shelters determine effective behaviour assessment protocols and all aim to make decisions about a dog's temperament in an appropriate way, so that dangerous dogs are not rehomed and suitable companion animals are not wrongly euthanised.

King, Marston and Bennett have undertaken research that suggests that there are many reasons why dogs are abandoned or relinquished. Whilst many of the reasons rest with owners, (such as financial and accommodation issues and lack of time), some relate more generally to the shift in the roles that dogs play, from specific utilitarian roles to the role of companion and the appropriateness for some types of dogs to play the role of companion.<sup>41</sup> Some breeders do not fully disclose the physical and behavioural aspects of the dogs that they breed, so these dogs are being sold to homes that are not equipped to train and live with them.<sup>42</sup>

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<sup>38</sup> Arbe Montoya et al, 'PRelationship between sources of Pet Acquisition and Euthanasia of Cats and Dogs in an Animal Shelter: a Pilot Study' (2017) 95(6) *Australian Veterinary Journal* 194, 194.

<sup>39</sup> Getting 2 Zero, *Background* (2013) <<http://www.g2z.org.au/background.html>>.

<sup>40</sup> *Code of Practice for the Operation of Pet Shops 2005* (Vic).

<sup>41</sup> Linda C Marston, Pauleen C Bennett and Grahame J Coleman, 'What Happens to Shelter Dogs? An Analysis of Data for 1 year from Three Australian Shelters' (2004) 7(1) *Journal of Applied Animal Welfare Science : JAAWS* 27, 29 and Rohlf, above n 33, 57 and Emily Weiss et al, 'Should Dogs and Cats be Given as Gifts?' (2013) 3(4) *Animals* 995.

<sup>42</sup> King, Marston and Bennett, above n 10, L Asher et al, 'Inherited Defects in Pedigree Dogs. Part 1: Disorders related to Breed Standards' (2009) 182(3) *Veterinary Journal* 402, King, Marston and Bennett, above n, 10, 4 and Marston, Bennett and Coleman, above n 41, 28.



There is increasing recognition that leaving decisions about how stray and abandoned dogs are treated to the individual animal shelter or pound does not promote fair outcomes for all dogs.<sup>43</sup> Australian shelters use a variety of different protocols to assess behaviour and not all staff who assess dogs receive training in how to do so. Given that the decisions made by staff in these shelters determine if a dog is to live or die they are making important decisions. Mornement and others call for training and the development of more appropriate and standardized protocols.<sup>44</sup> This call for more standardised behaviour assessment tools and protocols also comes from advocacy groups that seek consistent treatment of all dogs and who target 'getting to zero'. This is an approach to rehoming of dogs where no dogs need to be destroyed. This, they believe can be achieved through a combination of rehoming dogs held and a longer-term push towards preventing the creation of unwanted dogs through de-sexing, education and a number of other strategies.<sup>45</sup>

#### 2.4.3 Dog Overpopulation

Despite the fact that dogs are highly valued by many people in society, the problem of dog overpopulation continues to be a reality.<sup>46</sup> There is a volume of recent literature that considers the fate of unwanted dogs and attempts to understand why dogs end up in shelters. Within this literature is work from other countries that suggests that breeding practices that include giving away puppies, instead of selling them, contributes to dog overpopulation and the increasing number of stray and abandoned dogs. Such work ponders ways of reducing overpopulation,

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<sup>43</sup> Rhonda McLaughlin, 'Laws a bit of a Dog's Breakfast', *The Mercury* (Tasmania), 27 April 2013, 2.

<sup>44</sup> Mornement et al, above n 34, 328.

<sup>45</sup> Deathrowpets.net, *250 000 Healthy But Unwanted Cats and Dogs are Killed in Australian Pounds Every Year* (2013) <<http://www.deathrowpets.net/default.html>>; Getting 2 Zero, above n

<sup>46</sup> Linda C Marston, Pauleen C Bennett and Grahame J Coleman, 'What Happens to Shelter Dogs? Part 2. Comparing Three Melbourne Welfare Shelters for Nonhuman Animals' (2005) 8(1) *Journal of Applied Animal Welfare Science* : JAAWS 25, 25.

suggesting that laws that require dogs to be both confined and de-sexed will reduce overpopulation.<sup>47</sup>

The Australian literature shows varying approaches to the problem. Given that dogs are considered property, the rescue organisations that house them become the owners of these dogs and are required to make decisions on their care and the socialisation. They also decide on the steps that will be taken to rehome and ultimately how long these dogs will be held if no home can be found. Ultimately many dogs will be euthanized.<sup>48</sup>

Given the companion status of dogs, very few people would believe that disposing of a dog by destroying it would be an appropriate method for getting rid of an unwanted dog.<sup>49</sup> This suggests that, although the owner has property rights over the dog, sometimes these rights are overridden by the animal's personal rights, so that the owner is not free to damage or destroy that pet without good cause.<sup>50</sup> This feeling that a dog should not be disposed of by putting it to death contributes to dogs being abandoned and relinquished to rescue organisations, which in turn impacts on dog overpopulation.

Edwards notes that there are thousands of dogs that for a variety of reasons are unwanted or have been abandoned or relinquished.<sup>51</sup> There is emerging literature that examines such things as: should all pounds and shelters have the same internal rules on rehoming; how much of what actually happens in rescue organisations is open to scrutiny; when such bodies are underfunded what do they do; who makes the decisions about how much retraining a dog must undergo before it is rehomed or put down; should pounds transport dogs around that are more likely to

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<sup>47</sup> William J Fielding, 'Dog Breeding in New Providence, The Bahamas, and its Potential Impact on the Roaming Dog Population II: The Fate of Puppies' (2010) 13(4) *Journal of Applied Animal Welfare Science* , 300.

<sup>48</sup> Rohlf, above n 33, 33.

<sup>49</sup> Ibid, 33 and Cooke, above n 16, 266.

<sup>50</sup> A good cause might be when the companion animal is suffering terribly and only euthanasia will end that suffering.

<sup>51</sup> Edwards, above n 33, 5.

be rehomed, at the expense of resident dogs, and why do so many dogs end up in pounds or shelters?

#### 2.5.4 Puppy Provenance

Of the estimated 4 million dogs that live in Australia, less than 20% are produced by registered pure breed dog breeders. The remaining 80% are sourced from elsewhere.<sup>52</sup>

*Unfortunately, information about where most dogs come from and how breeding dogs are selected, other than within the purebred community is entirely absent from the scientific or popular literature.*<sup>53</sup>

There is growing desire amongst puppy buyers to find puppies that have been raised ethically.<sup>54</sup> There is often a confusing array of places where puppies can be sourced, with no guarantees of how those puppies have been raised.<sup>55</sup> In Australia there are a small number of 'registries' and bodies that keep a list of dog breeders (other than the ANKC which only registers the breeding activities of pure breed dog breeders.)<sup>56</sup> The two other largest breeder registry bodies are the Australian Association of Pet Dog Breeders (AAPDB) and the Master Dog Breeders Association.<sup>57</sup> The AAPDB registers breeders rather than dogs and the Master Dog Breeders Association is a group open to membership by canine enthusiasts, including pure breed dog breeders, dog welfare and rescue organisations, and professionals who work with dogs and dog owners. It is

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<sup>52</sup> Dogs NSW, 'A Forensic View of Puppy Breeding in Australia' (Dogs NSW, 2015) <[http://www.dogsnsw.org.au/images/stories/PDFS/A\\_Forensic\\_View\\_of\\_Puppy\\_Breeding\\_in\\_Australia3.pdf](http://www.dogsnsw.org.au/images/stories/PDFS/A_Forensic_View_of_Puppy_Breeding_in_Australia3.pdf)>.

<sup>53</sup> King, Marston and Bennett, above n 41, 6.

<sup>54</sup> Holly Enriquez, 'In the Doghouse', *Choice Magazine* (Chippendale), 2015 <<https://www.choice.com.au/outdoor/pets/products/articles/puppy-farms-and-buying-a-dog-ethically>>.

<sup>55</sup> Lucy Siegle, 'Where Can I Buy An Ethical Puppy?', *The Guardian* (online), 14 February 2010 <<http://www.theguardian.com/environment/2010/feb/14/lucy-siegle-pedigree-dogs-puppy-farms-inbreeding>>.

<sup>56</sup> Australian National Kennel Council Limited, 'A Forensic View of Puppy Breeding in Australia 2017' (2017) <<http://ankc.org.au/media/6598/a-forensic-view-of-puppy-breeding-in-australiav4.pdf>>.

<sup>57</sup> AAPDB Inc., *About Us* (2017) <<https://www.aapdb.com.au/about-us/>> and Master Dog Breeders Association Inc., *MDBA - Focusing on What's Best for Dogs* (2012) <<http://www.mdba.net.au/>>.

not known how many members these associations have and how many dogs their members are breeding.

### 3. Consumer Protection Issues

#### *3.1 Information Asymmetry*

Although dogs are considered property and therefore buyers have the protection of the Australian Consumer Law, the imbalance in knowledge and the fact that most dog buyers are making a decision that is partly based on emotion means that they may not be effectively asking the appropriate questions and breeders may not be providing full disclosure about the dog's suitability, health and temperament.

Most dog breeders develop good awareness about the physical and mental wellbeing of the dogs that they breed, the breed characteristics and the ongoing needs of the puppies that they breed. Dog buyers may not have such insight and may tend to rely on the breeder to provide this information. Not all breeders are able or willing to provide this information to puppy buyers. Morris in research examining dog breeding in British Columbia reported that this information asymmetry and buyers lack of knowledge about sellers has a direct impact on dog welfare because many dog buyers who have acquired a dog with undisclosed genetic defects or behavioural issues may choose to abandon the dog, surrender it or have it euthanised.<sup>58</sup>

#### *3.2 Inadequate Consumer Protection and Disclosures Obligations*

For a puppy buyer full of hope for a great life with their newly acquired dog, there will be considerable sadness, frustration and financial outlay should the puppy develop or suffer from any illness. Can the law really assist a puppy buyer who later discovers that the illness or issue is in fact something that might have been prevented if the breeder had: undertaken genetic screening or not bred particular dogs in their breeding program; provided better health care such as vaccinations and worming; or socialised the puppy to reach its full potential?

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<sup>58</sup> Morris, above n 29, 6.

Selling a sick or defective puppy will impact on its health over its lifetime or reduce its lifespan. Dog breeders are not legally responsible for all genetic defects a dog may be born with nor can a breeder predict all the health and behavioural issues that a litter of pups might face. An important distinction needs to be made between diseases and health issues that are 'chosen' and those that are '*not chosen*'.<sup>59</sup> The literature in the area defines 'chosen' diseases to be those that a dog may have due to deliberate breeding practices, breeding to strictly adhere to a breed standard, considering the appearance of the dog rather than its health, and failing to pay sufficient regard to diseases that occur because of inbreeding. With respect to the health issues, pups that suffer bad health because the breeder did not socialise the puppy, have it vaccinated or did not feed the puppy appropriately may be things that the law can protect against.

As has been established in the case law analysis set out in Chapter 2, the case law that has focused on breeder liability for genetic and health issues is not extensive but raises a number of practical matters. The breeder may not be aware that they have sold a puppy with a defect, if the defect does not become apparent for some time or if the owner does not make the breeder aware of the defect. The owner may be unwilling or unable to contact the breeder for a variety of reasons: they may have lost contact; may not understand that the illness is a defect that may have been caused by the way the puppy was bred; may fear being accused of causing the illness by the way they have cared for the dog or may be so attached to the puppy they are reluctant to return it. It was through a consideration of these practical matters that prompted this research to ask the question – just how many dog owners remain in contact with the breeder of their dog? This question is considered in Part II of Chapter 9 where owners were asked to reveal how much contact and communication they have with the breeder of their most recently acquired dog.

Even when the owner does notify the breeder of the issue, breeders are rarely made accountable for expenses that accrue over the dog's lifetime. The case law analysis that has been undertaken as part of this chapter found only a handful of cases concerning genetically sick puppies and attempts by owners to make breeders accountable. McGreevy and Bennett argue

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<sup>59</sup> Boissevain, above n 14, 151.

that as companion dog buyers purchase relatively few dogs over their lifetime, repeat business is an inconsequential consideration for many breeders. As a consequence, many breeders are not overly concerned about the genetic defects that exist in their breeding programs.<sup>60</sup>

Despite the practical matters, breeders should be doing more to ensure that they sell their puppies to suitable homes and that they are as free as possible from preventable defects. The issue of lack of seller disclosure and accountability is recognised in this research as an issue in terms of consumer protection, although it could equally be considered as a canine welfare and health issue.

For many, the purchase of a dog is an emotional one, unlike the purchase of a washing machine or other product. It is recognised by both the academic literature and law makers that buying a companion animal brings with it more complexities than buying any other piece of household property.<sup>61</sup> That companion dog buyers can rely on both contract law and consumer law is beneficial for them. However, the buyer still needs to convince the court that the dog has a defect that the breeder is responsible for and that this defect was not disclosed at the time of purchase. The focus of the lawsuit will be the 'defect', how it has diminished the dog's lifespan; and how has it impacted on its health, behaviour and welfare. Is it reasonable for a purchaser of a dog that is known to be short in the nose to claim that he was unaware that his dog would suffer from some breathing difficulties? Such a defect is not a hidden one and thus no doubt will be used by the breeder as a defence to a claim made by the purchaser. There may be other types of defects that appear even though a breeder has undertaken all appropriate genetic testing, so that the breeder is not at fault.<sup>62</sup>

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<sup>60</sup> P D McGreevy and P C Bennett, 'Challenges and Paradoxes in the Companion-animal Niche' (2010) 19(1) *Animal Welfare* 11, 13.

<sup>61</sup> Cooke, above n , 266 and Western Australian Government, *Buying a Pet and the Australian Consumer Law* (28 April 2011) <[http://www.commerce.wa.gov.au/consumerprotection/content/bettertrading/Issue/article\\_004.html](http://www.commerce.wa.gov.au/consumerprotection/content/bettertrading/Issue/article_004.html)>

<sup>62</sup> Boissevain, above n 14, 152.

This research considers the adequacy of the civil and consumer law that operates in Australia to protect companion dog buyers, asking specifically questions like:

- Can the civil law help stakeholders tackle genetic diseases that affect the welfare of pedigree dogs in the longer term? <sup>63</sup>
- Should there be more disclosure obligations on dog sellers in relation to: how the dog was bred; breed health; breed characteristics and living requirements to overcome the reality of information asymmetry? <sup>64</sup>

Although approximately only 17% of puppies that are sold in Australia each year come from registered pure breed dog breeders, this still equates to approximately 70 000 puppies each year.<sup>65</sup> A large proportion of registered dog breeders breed puppies to further the breed and not to sell puppies commercially. This is part of the *Code of Practice and Ethics* espoused by both the ANKC and a number of the State and Territory canine associations.<sup>66</sup> The reality is that to fund their breeding programs and to find homes for puppies that will not be retained to show or breed, many pure breed dogs are sold to companion dog buyers.

Cohen and Cohen suggest that some buyers acquire a puppy purely based on how it looks without having any regard to how it will fit in with their lifestyle. Sometimes such dogs impede their owner's lifestyle and are harder to care for than anticipated. This adds to the number of dogs that are relinquished.<sup>67</sup> Clearly there is an obligation on the side of the buyer to do some research into what type of puppy will suit their lifestyle but equally, so it is important that

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<sup>63</sup> Ibid.

<sup>64</sup> Morris, above n 29.

<sup>65</sup> Australian National Kennel Council Limited, 'Australian National Kennel Council Limited National Animal Registration Analysis 2010 - 2019' (2017) <[http://ankc.org.au/media/6596/reg-stats-list\\_2010-2019.pdf](http://ankc.org.au/media/6596/reg-stats-list_2010-2019.pdf)>.

<sup>66</sup> See Appendix 3 - Dogs Victoria Code of Practice – Section 20.1.11 states that a member shall breed primarily for the purpose of improving the quality and or working ability of the breed in accordance with the breed standard, and not specifically for the pet or commercial market.  
<http://www.dogsvictoria.org.au/Portals/0/assets/aboutUs/Code%2020.1.pdf>.

<sup>67</sup> Lloyd D Cohen and Debra S Hart-Cohen, 'Show Dogs and Breeding' (2009) 26(5) *GP Solo* 26.

breeders are fully objective when describing their breeds. Rohlf argues that the provision of written information that fairly documents the characteristics of the breed to potential buyers should reduce the incidence of impulsive or improper purchase.<sup>68</sup>

Dog buyers are free to make their own choices when they acquire their next dog. Many breeds of dogs in Australia have in the past served a function that no longer exists. Buyers today are still able to select their next dog based on its on physical appearance rather than on its physical health and temperament.<sup>69</sup> Not all breeds will suit all companion dog buyers and unless both the breeder and buyer discuss breed suitability prior to purchase, some dogs will be sold into homes that are not equipped or understanding of the puppy's needs and general suitability.

#### 4. Canine Welfare and Health Issues

The literature addresses a number of canine welfare and health issues. This review considers the most prominent issues, around: the objectives of breeders; puppy provenance; health issues; and harmful breeding practices. Whilst the motivations of breeders and issues around puppy provenance might not be considered to be canine welfare and health issues, the results of ill thought out breeding practices and a lack of appropriate provenance considerations directly impacts on dog welfare, so these issues are considered here.

##### 4.1 Puppy Provenance

For many dogs there is little known about their provenance and therefore little known about their genetic and physical wellbeing. Dogs are being born in commercial breeding facilities, to backyard breeders and to other breeders but little is known about what motivates each type of breeder, and about how they breed and raise their puppies.

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<sup>68</sup> Rohlf, above n 33, 46.

<sup>69</sup> Koharik Arman, 'A New Direction for Kennel Club Regulations and Breed Standards' (2007) 48(9) *The Canadian Veterinary Journal. La Revue Vétérinaire Canadienne* 953, 953. An example is the Alaskan Malamute, the largest of the Arctic Nordic sled dogs bred to pull sleds to provide transportation. There were nearly 300 puppies registered in 2014 across Australia and it would be fair to say that the majority of these dogs will not be used to pull sleds but instead be purchased for another purpose such as for companionship.



With the exception of puppies bred by registered ANKC members, there is currently no way in Australia to identify where puppies are being born. The corollary of this is that there are no effective mechanisms to ensure that breeders are identifiable and accountable for the puppies that they breed.

Whilst some breeding codes (such as the current Victorian code) do mandate good record keeping, the reality is that many breeders do not keep effective records.<sup>70</sup> The data that does exist comes only from the ANKC which publish annual statistics of puppies born. In 1990 ANKC registered breeders bred 88 000 puppies, declining to just under 78 000 in 2000 and 70 000 in 2015.<sup>71</sup> It is estimated that there are between three and a half to four million dogs in Australia currently.<sup>72</sup> If it is assumed that the average dog will live for 12 years then conservatively it is estimated that of the 350 000 to 400 000 dogs that are required to replace these dogs, under 17% are coming from registered breeders.<sup>73</sup>

A large number of dogs in Australia are born in a less regulated and less visible environment. This group of breeders includes the occasional or accidental breeder. Dogs are often bred outside of large commercial breeding facilities and often in irresponsible ways that cause considerable

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<sup>70</sup> Each of these codes varies in terms of detail. Appendix 3 contains a list of the names of the codes that apply in each State or Territory. There is acknowledgement in the NSW and Victorian Breeding that certain exemptions *should be given to ANKC registered breeders*.

<sup>71</sup> Registered Breeders include all dog breeders that are members of any of the State and Territory Canine Associations and its Affiliates. Registered breeders are subject to the regulation, codes and standards of the applicable State or Territory Canine Association. Each State and Territory Canine Association has a code of ethics for breeding. Australian National Kennel Council Limited, above n

<sup>72</sup> Australian Companion Animal Council, 'Contribution of the Pet Care Industry to the Australian Economy - 7th Edition' (Animal Health Alliance 2010)

<sup>73</sup> Kersti Seksel, 'Now Why Did I Come Here? Canine Cognitive Dysfunction' ( Paper presented at AVA Combined Sessions (Vets and Nurses) - NSW Annual Regional Conference, Leura, 2013). The Pet Industry Association of Australia estimated in 2012 that approximately 450 000 dogs are sold each year in Australia. Pet Industry Association of Australia, 'PIAA Dogs Lifetime Guarantee Policy On Traceability & Rehoming Research, Analysis and Statistics. ' (2012) <<http://piaa.net.au/about/re-homingpolicy/>>,2. That such groups are only able to use estimates makes the collection of reliable data on where our dogs are coming from even more compelling.

welfare problems.<sup>74</sup> Those that continue to breed litters outside of the current regulatory framework can be defined as 'backyard breeders' and may be more detrimental to breeding dog welfare than the identifiable commercial breeding institutions.

Many companion dog buyers will never see where their dog was born, they will not meet their puppy's parents or see what conditions they live in. Without a full understanding of how and where dogs are born in Australia it is hard to comment on the welfare standards that breeding dogs live under, nor can regulatory bodies fully understand what type of regulation is required and who should be regulated.

## 4.2 Health Issues

### 4.2.1 Introduction

The health issues that canines face are not unique to Australia and much has been written over the last 20 or so years, in countries such as Australia, Canada, the UK, New Zealand and USA.<sup>75</sup> Currently, there are approximately 400+ breeds of dogs worldwide and a number of these breeds face behavioural and genetic health issues.<sup>76</sup> This is not a new occurrence; there have been genetic problems in pedigree dogs for a number of decades.<sup>77</sup>

Dogs, like many species that have been bred by humans over many hundreds of years, face a number of serious genetic and health issues. The effect of such issues on a number of pedigree dogs was brought into the public domain by a documentary that was aired for the first time in the UK in 2008 on BBC One. This documentary, *Pedigree Dogs Exposed*, and its follow up that aired in 2012 identified that both inbreeding and breeding in strict adherence to a breed standard focusing on form rather than function and dog health and welfare, was increasing the

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<sup>74</sup> Crispin, above n 1,129.

<sup>75</sup> PD McGreevy and F W Nicholas, 'Some Practical Solutions to Welfare Problems in Dog Breeding' (1999) 8 *Animal Welfare* 329, 331; and Arman, above n 69 and Morris, above n 42, 15.

<sup>76</sup> K Streitberger et al, 'Rapid Genetic Diversification within Dog Breeds as Evidenced by a Case Study on Schnauzers' (2012) 43(5) *Animal Genetics* 577.

<sup>77</sup> Boissevain, above n 14, 151.

chances of dogs inheriting genetic disorders.<sup>78</sup> These documentaries identified a number of key issues impacting significantly on canine health and wellbeing over the last 30 or 40 years.<sup>79</sup> Whilst these documentaries may be emotive and may not be a fair evaluation of the state of play, they highlight the issues that needed to be addressed, such as: cardiovascular problems; skin conditions; breathing difficulties; neurological diseases; inflammatory disorders with immune failures; and cancers.<sup>80</sup> The response in the UK by a number of the key stakeholders was swift, and reports were commissioned by the UK Kennel Club, The Associate Parliamentary Group for Animal Welfare (APGAW) - an independent Parliamentary Committee and the RSPCA UK. Dogs Trusts and the Kennel Club commissioned a joint independent review, chaired by Professor Sir Patrick Bateson FRS.<sup>81</sup> On appointment in 2008 Bateson announced:

*I recognise the great importance of this review and the need to consult with a wide range of experts to safeguard the health and welfare of dogs in the future.*<sup>82</sup>

Veterinarian researchers such as Arman, Morris, McGreevy and Nicholas have for more than 20 years confirmed that the creation of a number of diverse breeds by man and the continuation of

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<sup>78</sup> *Pedigree Dogs Exposed* (Directed by Jemima Harrison, BBC One, 2008 and *Pedigree Dogs Exposed: Three Years On* (Directed by Jemima Harrison), BBC One, 2012

<sup>79</sup> *Pedigree Dogs Exposed* (Directed by Jemima Harrison, BBC One, 2008, *Pedigree Dogs Exposed: Three Years On* (Directed by Jemima Harrison), BBC One, 2012, and Frank W Nicholas, 'Response to the Documentary Pedigree Dogs Exposed: Three Reports and their Recommendations' (2011) 189 *Veterinary Journal* 126, 126.

<sup>80</sup> A S Lequarre et al, 'LUPA: A European Initiative Taking Advantage of the Canine Genome Architecture for Unravelling Complex Disorders in Both human and Dogs' (2011) 189(2) *Veterinary Journal* 155, 155.

<sup>81</sup> House of Commons Environment Food and Rural Affairs Committee, 'Dog Control and Welfare - Written Evidence' (2012) <<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmenvfru/writew/dogcontrol/dog.pdf>> and Nicholas, above n 79 and McGreevy and Nicholas, above n 75.

<sup>82</sup> Sir Patrick Bateson FRS *Dogs Trust and the Kennel Club Announce Chair of Independent Review* (12 January 2009) The Kennel Club [http://www.thekennelclub.org.uk/item/2224/pg\\_dtl\\_art\\_news/pg\\_hdr\\_art/pg\\_ftr\\_art](http://www.thekennelclub.org.uk/item/2224/pg_dtl_art_news/pg_hdr_art/pg_ftr_art), and Patrick Bateson, 'Independent Inquiry into Dog Breeding' (<<https://breedinginquiry.files.wordpress.com/2010/01/final-dog-inquiry-120110.pdf>>).

these specific breeds with limited genetic diversity has led to many of the issues that face a number of pure breed dogs today.<sup>83</sup>

#### 4.2.2 Extreme Morphologies/ Exaggeration of Form Type – ‘Form over Function’

Selective breeding of dogs has a rich history and has led to the most morphologically diverse of all mammal species.<sup>84</sup> It is through the efforts of dog breeders that the vast majority of dog breeds recognised today have been established. In the past, these dog breeders may have bred dogs to work sheep, hunt, retrieve, detect etc. The reality today is that pure breed dogs are primarily bred by people who intend to show them, and these breeders adhere to breed standards. It is recognised that many of these breeders are very passionate about their breeds and do aim to breed healthy, well-tempered dogs.<sup>85</sup> However, many other breeders focus more on complying strictly with the breed standard in the hope of winning in the show ring. This focus has led to many breed features becoming exaggerated over time. A strict adherence to a breed standard may help a dog win in the show ring but in a number of breeds it has caused an exaggeration of form type that has had detrimental effects on the functionality of the breed and the suitability for the breed to be a companion dog.

The veterinarian evidence suggests that breeders’ rigid adherence to breed standards has meant that function has been lost in some breeds, causing breathing issues, leg issues, head issues and other health issues.<sup>86</sup> Many of the breeds that exist today are no longer capable of performing the tasks for which they were originally bred.<sup>87</sup> In some breeds the focus on the breed standard

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<sup>83</sup> McGreevy and Nicholas, above n 75, 330.

<sup>84</sup> Adam R Boyko et al, 'A Simple Genetic Architecture Underlies Morphological Variation in Dogs' (2010) 8(8) *PLoS biology* 1. 2.

<sup>85</sup> L M Collins et al, 'Getting Priorities Straight: Risk Assessment and Decision-making in the Improvement of Inherited Disorders in Pedigree Dogs' (2011) 189(2) *Veterinary Journal* 14711, 147.

<sup>86</sup> Associate Parliamentary Group For Animal Welfare, 'A Healthier Future for Pedigree Dogs' (2009) <<http://www.apgaw.org/images/stories/PDFs/a-healthier-future-for-pedigree-dogs.pdf>> 8.

<sup>87</sup> Ibid, 148 & Arman, above n 69.

on morphological features can be dangerous for both the individual dog and the long term health of the breed when taken to the extreme.<sup>88</sup>

#### 4.2.3 Inheritable Diseases and Inbreeding

In Australia today, there are over 200 breeds of dogs recognised by the ANKC. Some of these breeds started with very little foundation stock. In a number of breeds this inbreeding, (the breeding of closely related dogs) has meant that there are many genetic health issues.<sup>89</sup>

Veterinarian researchers such as Summers et al, Jansson and Laikre, Farrow, Keown and Farnworth believe that this inbreeding has caused a high prevalence of genetically inherited health issues.<sup>90</sup>

To achieve and maintain breed diversity in a way that is reproducible, breeders have extensively used founder dogs, that is, dogs who express desirable traits concerning size, coat colour, length of leg etc. The result of this extensive use of a limited number of founder dogs to develop a certain type or breed has inadvertently also increased the frequency of undesirable genes carried by those founders.<sup>91</sup> Research in both the UK and the USA has identified inherited disorders in a number of popular breeds, and notes that the disorders are more prevalent in pure breed dogs than in those of mixed breed.<sup>92</sup> Whilst many breeders work hard to minimise

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<sup>88</sup> Some standards specify very long ears, domed heads, long backs, screw tails, great or very small body size, wrinkled skin and other features which also can have an adverse impact on health and welfare, either directly or indirectly" Collins et al, above n 85,150 and 'Immune regulation of canine tumour and macrophage PD-L1 expression' (2016) *Vet and Comparis* 2.

<sup>89</sup> Nicola Rooney and David Sargan, 'Pedigree Dog Breeding in the UK: a Major Welfare Concern?' (2009) 56. 20. & J F Summers et al, 'Inherited Defects in Pedigree Dogs. Part 2: Disorders that are not Related to Breed Standards' (2010) 183(1) *Veterinary Journal* 39.

<sup>90</sup> Summers et al, above n 89 and T Farrow, AJ Keown and MJ Farnworth, 'An Exploration of Attitudes Towards Pedigree Dogs and their Disorders as Expressed by a Sample of Companion Animal Veterinarians in New Zealand' (2014) 65(5) *New Zealand Veterinary Journal* 267, M Jansson and L Laikre, 'Recent breeding history of dog breeds in Sweden: modest rates of inbreeding, extensive loss of genetic diversity and lack of correlation between inbreeding and health' (2014) 131(2) *Journal of Animal Breeding and Genetics* 153.

<sup>91</sup> Asher et al, above n 42.

<sup>92</sup> Collins et al, above n 85 and A M Oberbauer et al, 'Ten Inherited Disorders in Purebred Dogs by functional breed groupings' 2:9 *Canine Genetics and Epidemiology* .

these inherited disorders, other breeders may not accept that such issues exist and need to be addressed. Acceptance of these issues by well-established breeders has not come quickly.<sup>93</sup> Different breeds and breed types have different issues and some genetic issues are more prevalent.<sup>94</sup> Health testing and screening is still in its infancy and often expensive. There is still a lack of clear uniform guidelines on what testing should be done for a large proportion of the breeds that exist today. Even where there are tests that are advocated scientifically, it is often left to the breed clubs and breeders to decide whether to test.

#### 4.2.4 Summary of Responses in the Most Recent Veterinarian Research Literature

There is a substantial body of research undertaken by veterinarians around dog health and in particular around the issues facing pure breed dogs. This is not surprising given veterinarians have recognised the issues since the early 1960s.<sup>95</sup> What is comparatively new though is that:

- veterinarians and others are now making efforts to bring the extent of such problems to the public's attention, which has raised public concern and created realisations in a number of pure breed canine associations that steps need to be taken to address the issues;<sup>96</sup>
- literature that considers how the various breeds are affected by inbreeding and line breeding reports that not all dog breeds are treated equally when it comes to the raising of funds to assist in the efforts to engage in research aimed at addressing the issues that pure breed dogs face.<sup>97</sup>

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<sup>93</sup> P Sandee and Kondrup, 'Why do People Buy Dogs with Potential Welfare Problems Related to Extreme Conformation and Inherited Disease? A Representative Study of Danish Owners of Foud Small Dog Breeds ' (2017) *PLOS One* 1, 2.

<sup>94</sup> S Wang et al, 'Genetic Correlations of Hip Dysplasia Scores for Golden Retrievers and Labrador Retrievers in France, Sweden and the UK' (2017) 226 *The Veterinary Journal* 51, 51.

<sup>95</sup> Collins et al, above n 85, 148.

<sup>96</sup> Ibid & Lequarre et al, above n 93, 155.

<sup>97</sup> Breeds such as Cavalier King Charles Spaniels, German Shepherds and Golden Retrievers have, in the UK at least received more funding. This is a result of either a strong Breed Club, as was the case with Cavalier King Charles

- there is a view that some breeds have issues that can only be fixed with the use of cross breeding.<sup>98</sup>
- the emergence of further veterinarian research suggests that there is no significant correlation between inbreeding and dog health.<sup>99</sup>
- there is recognition in professional veterinarian material that the issues in pedigree dog breeding will be not solved simply by changing what dog breeders do, but instead by taking a systems approach calling for all stakeholders to be involved in working towards change.<sup>100</sup>

Rooney and Sargan argue that because a significant number of companion dogs are pure breed, and a significant proportion of breeds have been identified as having member dogs that may suffer from health issues, this a significant welfare issue. These health problems can severely reduce the quality of life of existing dogs and have the potential, unless addressed, to perpetuate from generation to generation.

The ANKC states one of its aims as '*ensuring that dogs are fit for function, fit for life*' – the promotion of dogs that are fit for their function but also fit, in terms of health to live a long healthy life.

#### 4.3 Dog Behaviour

For dogs to be able to live effectively and safely with humans, they need to have temperaments that make them good companions or otherwise they risk abandonment. There is a need for systematic efforts to promote the breeding of pure breed dogs with the temperaments and

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Spaniels; or due to the fact that a breed is supported by an organisation because of its trainability for human assistance, as is the case with Golden Retrievers.

<sup>98</sup> Farrow, Keown and Farnworth, above n 103 and Lindsay L Farrell et al, 'The Challenges of Pedigree Dog Health: Approaches to Combating Inherited Disease' (2015) 2:3 *Canine Genetics and Epidemiology* 1, 10

<sup>99</sup> Jansson and Laikre, above n 90, 159

<sup>100</sup> The Demand Side of the Health Argument was considered in the BSAVA congress in Birmingham in 2015. Laura Feetham, 'Thinking Differently About Pedigree Dogs' (2015) 176(18) *Veterinary Record* 454.

behavioural predispositions best suited to the role of companion dog.<sup>101</sup> Svartberg and others argue that temperament and aggression may, to an extent be predicted by breed or genetic factors due both to evolution and selective breeding.<sup>102</sup> Others such as Udell have found that a combination of both genetic and lifetime factors impact on how dogs interact with humans.<sup>103</sup> There has been growth in the scientific and veterinarian literature by researchers such as McGreevy that seeks ways to temperament-test dogs, thereby assessing their suitability to work as guide dogs and police dogs.<sup>104</sup> If successful, such work could be extended to all dogs that are to live as companions. The research set out in this thesis investigates how many dogs owned in Australia are viewed by their owners as companions and family members. If the majority of dogs are to live as companions and the way that they are bred and raised can impact on how they interact with their human companions, there may be an argument for including requirements for temperament testing of dogs before they are placed into families into breeding codes.

#### 4.4 Harmful Breeding Practices

Some breeding practices continue to exist that are against best practice as advocated by veterinarians and welfare organisations. Some of these have been considered above.<sup>105</sup> Another example of such a practice was tail docking of puppies in a number of breeds which was widespread until it was banned in Australia in 2008. Some years earlier animal welfare researchers Bennett and Perini pondered the question why legislation to ban tail docking would

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<sup>101</sup> King, Marston and Bennett, above n 8, 5.

<sup>102</sup> Kenth Svartberg et al, 'Consistency of Personality Traits In Dogs' (2005) 69(2) *Animal Behaviour* 283, P Saetre et al, 'The Genetic Contribution to Canine Personality' (2006) 5(3) *Genes, Brain and Behavior* 240, Deborah D Duffy, Hsu Yuying and James A Serpell, 'Breed Differences in Canine Aggression ' (2008) *Applied Animal Behaviour Science* and Y Takeuchi et al, 'Association Analysis between Canine Behavioural Traits and Genetic Polymorphisms in the Shiba Inu Breed' (2009) 40 *Animal Genetics* 616 and Witold Stanisław Proskura et al, 'Genetic Background of Aggressive Behaviour in Dogs' (2013) 82(4) *Acta Veterinaria Brno* 441.

<sup>103</sup> Monique A Udell et al, 'Exploring Breed Differences in Dogs (Canis Familiaris): Does Exaggeration or Inhibition of Predatory Response Predict Performance on Human-Guided Tasks?' (2013) 89 *Animal Behaviour* 99.

<sup>104</sup> Paul McGreevy, *A Modern Dog's Life* (University of New South Wales Press Ltd, 2009), 247.

<sup>105</sup> P C Bennett and E Perini, 'Tail Docking in Dogs: Can Attitude Change Be Achieved?' (2003) 81(5) *Australian Veterinary Journal* 277, 280.



be needed given the overwhelming veterinarian and welfare organisation evidence that argues it is an unnecessary and painful procedure for puppies. Bennett and Perini confirmed that, having considered the economic, welfare, aesthetic, moral and practical considerations, as a general practice tail docking could not be supported beyond a case by case basis on health grounds. Despite this, where it had been part of the acceptable look and breed standard for many years, breeders opposed the introduction of the legislation was passed in 2008 a number of breeders continued to engage in tail docking or to send pregnant dogs overseas to enable the tail docking of the resultant puppies.<sup>106</sup> Such breeders maintained their views that the practice was acceptable by discounting the evidence presented against it and by discrediting the source of such information. Perini and Bennett used the theory of '*cognitive dissonance*' to provide a framework for tail docking. This theory provides that some people will hold onto a practice or a belief despite evidence to the contrary.

Although tail docking was banned nearly 10 years ago, the issue of the perceived benefits of breeding short tailed dogs continues. In 2014 Edwards and Bennett revisited tail docking and confirmed that in Australia some breeders prefer to breed dogs that have a gene that is responsible for producing naturally bobbed tails so that the dog 'looks right', despite having little knowledge of what introducing such a gene might do to the long-term health of their breeding program.<sup>107</sup>

## 5. Stakeholders Issues

Dogs are highly valued in our society, so it is not surprising that there are many stakeholder groups involved in dog welfare and dog breeding. Not all of these stakeholders have the same motivations and views around dog ownership, dog welfare and dog breeding, nor do they all

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<sup>106</sup> *Advice Please Doberman* (2017) Dogzonline <<https://www.dolforums.com.au/topic/269082-advice-please-doberman/>>.

<sup>107</sup> Bennett and Perini, above n 105, 280.

have the same ability to influence change. Also, no one stakeholder group is ever a truly homogenous entity, and within groups different views prevail.<sup>108</sup>

In dog breeding, the stakeholders that have been identified through personal knowledge and from an examination of the literature are: dog breeders; welfare groups; canine associations; veterinarians; animal behaviourists, animal managers; those involved in dog sport and owners and the regulatory bodies, such as the RSCPA and the ANKC. By far the largest stakeholder group is companion dog owners. This group may however have a limited ability to understand the issues, and even should they do so, they may have little ability to influence change.

This research explores the perceptions that the various stakeholder groups have about the issues in dog breeding, in light of their differing objectives and views on the role and effectiveness of regulation to improve outcomes for dogs and dog buyers.

### *5.1 Stakeholders in Dog Breeding*

There are many stakeholder groups when it comes to making decisions that impact on dog welfare and dog regulation. Groups will vary in size of membership, on their perception of the importance of each issue and on the best ways to address the issues. Not all of these groups are as vocal and well informed as others about the issues that have been raised in this research or on the options for implementing change. The fact that the various stakeholder groups can appear to be rivals when it comes to consider the role of legislation in animal welfare is acknowledged in animal health and welfare legislation. That policy makers may respond to the concerns or interests of one set of stakeholders over another is recognised by researchers such as McEldowney, Grant and Medley.<sup>109</sup>

As the many stakeholders, often voice different opinions on the role of regulation, policy makers need to remain objective and balanced in light of the many different views that are often expressed. This has been acknowledged a number of times by parliamentary enquiries that have

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<sup>108</sup> Siobhan O'Sullivan, 'Transparency and Animal Research Regulation: An Australian Case Study, Institute for Critical Animal Studies (2006)', 2.

<sup>109</sup> McEldowney, Grant and Medley, above n 26, 157.

taken place in Australia over the last few years.<sup>110</sup> This research seeks to identify and consider the views of as many of the stakeholder groups as possible as the attitudes and perceptions of stakeholders are recognised as a driving factor in improving animal welfare outcomes.<sup>111</sup>

## 5.2 Stakeholder Differences

As there are many stakeholder groups it is not surprising to find disagreement between key stakeholders on the issues and the ways that these issues can best be addressed, and even on the future of dog breeding in Australia. It also becomes apparent, from examining the literature and other sources of information, that the various stakeholder groups may have differing abilities to recognise the issues and their significance. They may also have differing abilities to make recommendations and influence change. However, it is clear, as expressed by Rooney and Sargan that plans of action to address the issues in dog breeding cannot be implemented without the input and support of all stakeholders.<sup>112</sup> Rooney and Sargan argue that, if recommendations come from opinionated experts unless all stakeholders are consulted on the recommendations they will be less likely be understood and supported.<sup>113</sup>

A consolidated approach to the issues will only be reached if all stakeholders are able and willing to express their views. Each of the stakeholder groups may perceive their role in promoting dogs, dog pursuits and dog welfare in Australia differently. Different stakeholder groups have different reasons for pursuing regulation of dog breeding. Some stakeholders may have a financial interest that drives their commitment to dogs. Other stakeholders may not have a financial interest but a deep emotional connection that drives them to seek regulation that

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<sup>110</sup> Legislative Council Economy and Infrastructure Committee, Parliament of Victoria, *Inquiry into the Legislative and Regulatory Framework Relating to Restricted-Breed Dogs*, (2016), xi.

<sup>111</sup> The Animal Welfare Science Centre, 'Annual Report' (University of Melbourne, Ohio State University, Department of Primary Industries Victoria,, 2011 - 2012)  
<<http://animalwelfare.net.au/sites/default/files/AWSCReport%201112%20FINAL.pdf>>

<sup>112</sup> Rooney and Sargan, above n 89, 38.

<sup>113</sup> Ibid, 39.

improves outcomes for dogs. Given these differences it must be accepted that working towards identifying the issues and ways to address them may prove challenging.

### PART III. CONCLUSION

This Chapter has critiqued the literature that identifies the issues in dog breeding. These issues were classified in this Chapter as being either: legal and regulatory; consumer protection; canine welfare and health or stakeholder focused. The exploration of the issues and this classification has been pivotal in the construction of the research question and its components that are set out in Part II of Chapter 1 and Part II of Chapter 5. This exploration has confirmed that a number of the issues that exist are either regulatory in nature or are issues that can be addressed in some way by changing some aspects of the current regulatory framework.

Having identified the issues and the deficiencies that exist in the regulatory framework this research seeks to: provide mechanisms for evaluating the current regulatory framework in light of these deficiencies and to suggest regulatory changes that might assist in addressing them. Chapter 4 provides an examination of regulatory theory. This examination provides an understanding of: regulatory approaches; the role of regulatory actors; regulatory techniques; appropriate methods for assessing effectiveness of regulation; and appropriate research methods for undertaking regulatory studies research. Table 2 below, provides the links between the research components and the issues as considered when undertaking the literature review and case law analysis.

*Table 2 - Links between Research Components and Regulatory Issues*

	Issues / challenges that emerged during the literature and thesis review and case law analysis				
	Research Component	Legal and Regulatory	Consumer Protection	Canine Welfare and Health	Stakeholder
1	What are the major issues facing dog breeding in Australia, as perceived by key stakeholders, and how do those stakeholders believe these issues can be addressed?				What do stakeholders and owners perceive are the major issues in dog breeding in Australia? How do they believe the issues can be addressed?
2	What are stakeholder's perceptions of the role of regulation in dog breeding?	What is the role of law and regulation in dog breeding? Do stakeholders believe that regulation itself is partly an issue?			
3	What are stakeholders' views on the effectiveness of the current regulatory environment in ensuring appropriate canine welfare and appropriate outcomes for consumers?	What is the effectiveness of the current regulatory framework in ensuring all dogs have acceptable levels of care and welfare?	What is the effectiveness of the current regulatory framework in protecting dog owners when the dog they buy suffers from a genetic, behavioural or health issue or defect	What is the effective regulatory mix that will ensure the ongoing genetic, physical and behavioural health of pure breed dog bred in Australia?	
4	What are the drivers for consumers and breeders in dog breeding?		Is how dogs are bred important to dog owners? Do consumers want commercial dog breeding? Do consumers value having a large number of pure breed dogs to choose from?		What motivates breeders? What do consumers want when they acquire a dog?

## CHAPTER 4: REGULATORY THEORY

*Regulatory research shares a common concern: to describe and explain how regulation is embedded in world systems.<sup>1</sup>*

### PART I. INTRODUCTION

This Chapter discusses the theory that underpins the critical analysis of the regulatory framework for dog breeding undertaken during the course of this thesis. Regulatory theory provides a framework for understanding the complexities within, and the components that make up a regulatory environment. It also provides methods of assessing and analysing the effectiveness of regulation and of actors within that regulatory environment. Finally, it aids in designing constructive interventions that can address issues that exist in a regulatory environment.<sup>2</sup> This theory and the broader social science and business research in which it sits, has been used to support the research methodology and methods which are articulated in Chapter 5.

This Chapter examines the influential work around responsive regulation initiated by Ayres and Braithwaite that has been developing over the last 20 years. It considers the work around the regulatory state by Braithwaite, Brownsword and Scott that recognise that the rise in the number of regulatory agencies, and the redistribution of the tasks of regulation within the state and society, makes the study of the regulatory state important.<sup>3</sup> This work recognises that a number of different actors may operate within a policy domain, often with different levels of power and access to resources.<sup>4</sup> As has been seen in Chapter 3, the dog breeding industry in

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<sup>1</sup> Kathryn Henne, 'Multi-sited Fieldwork in Regulatory Studies' in Peter Drahos (ed), *Regulatory Theory Foundations and Applications* (ANU Press 2017) , 97.

<sup>2</sup> Peter Drahos (ed), *Regulatory Theory Foundations and Applications* (ANU Press, 2017), xxxi.

<sup>3</sup> John Braithwaite, *Regulatory Capitalism: How it Works, Ideas for Making it Work Better* (Edward Elgar, 2008), vii and Drahos, above n 2, xxxii and Roger Brownsword, 'Responsible Regulation: Prudence, Precaution and Stewardship' (2011) 62(5) *Northern Ireland Legal Quarterly* 573, 576.

<sup>4</sup> Ian Ayres and John Braithwaite, *Responsive Regulation - Transcending the Deregulation Debate* (Oxford University Press, 1992), John Braithwaite, 'Accountability and Governance Under the New Regulatory State' (1999) 58 *Australian Journal of Public Administration* 90, John Braithwaite, 'Rewards and Regulation' (2002) 29(1) *Journal of*

Australia includes a number of regulatory actors, all with a varying degree of power and access to resources. The industry faces a continuous process of change in regulation and the actors within it all play different but interrelated roles, with each having the power to intervene in different ways.<sup>5</sup>

Part II of this Chapter provides more detail on the role of theory in this research. Part III provides a consideration of the regulatory studies literature. Included in Part III is a consideration of a number of compliance models and regulatory approaches and the role of effective enforcement and insight. Part IV provides a consideration of Australian animal welfare regulatory literature. Part V considers how a responsive network approach may apply to dog breeding. Parts VI and VII consider what measures are available and necessary to consider the effectiveness of regulation and the regulatory space in dog breeding. A framework is provided for assessing and analysing the effectiveness of regulation. This acknowledges that regulators need to adopt a responsive regulatory approach that incorporates: consistency; a shift away from criminal sanctions; a move towards more industry involvement to solve problems and to set standards; and the use of appropriate regulatory techniques and measures in order to provide maximum benefit to the animals being regulated.<sup>6</sup> This theory assists this research as it enables a consideration of a network of regulators within a regulatory state and how they interact.<sup>7</sup>

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*Law and Society* 12 and Colin Scott, 'Regulation in the Age of Governance: the Rise of the Post Regulatory-State' in Jacint Jordana and David Levi-Faur (eds), *The Politics of Regulation* (Edward Elgar Publishing 2004) 145.

<sup>5</sup> Drahos, above n 2, xxxii.

<sup>6</sup> Jed Goodfellow, 'Animal Welfare Law Enforcement: To Punish or Persuade?' in Peter Sankoff and Steven White (eds), *Animal Law in Australasia* (Federation Press, 2nd ed, 2013) 183, 194-197.

<sup>7</sup> Sue Llewelyn, 'What Counts as Theory in Qualitative Management and Accounting Research? Introducing Five Levels of Theorizing' (2003) 16(4) *Accounting, Auditing & Accountability Journal* 662, 672. and Colin Scott, 'Accountability in the Regulatory Space' (2000) 27(1) *Journal of Law and Society* 38, Colin Scott, 'Analysing Regulatory Space: Fragmented Resources and Institutional Design' (2001) Summer *Public Law* 329, Scott, above n and Colin Scott, 'Evaluating the Performance and Accountability of Regulators' (2013-2014) 37(2 - Winter) *Seattle University Law Review* 353.

Responsive regulatory theory and governance/network analysis theory have been applied to other industries in Australia.<sup>8</sup> These theories are relied on in this thesis in assessing regulation in dog breeding.

## PART II. USE OF THEORY

Before examining the regulatory studies literature, it is necessary to canvas the role that conceptual theory plays in social science and socio legal research more generally. Doctrinal socio legal research should make both a theoretical and practical contribution and have relevance in both contexts. Theory provides a framework and tools that can be used to understand and test empirical issues and provide ways in which comparisons can be made. The meaning of data cannot be assessed without theory and theories cannot be validated and are not useful unless tested by the use of data.<sup>9</sup>

Theory can be considered in many ways. One way that is useful to this research is that theory in social science can provide a lens under which data can be viewed and assessed, that allows

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<sup>8</sup> Ayres and Braithwaite, above n 4 ; Braithwaite, above n 4 ; John Braithwaite, 'Responsive Regulation and Developing Economies' (2006) 34(5) *World Development* 884 ; Judith Healy and John Braithwaite, 'Designing Safer Health Care Through Responsive Regulation ' (2006) 184(10) *Medical Journal of Australia* ; Charlotte Wood et al, 'Applications of Responsive Regulatory Theory in Australia and Overseas' (2010) *Regulatory Institutions Network* ; John Braithwaite, 'The Essence of Responsive Regulation. (Fasken Lecture)' (2011) 44(3) *University of British Columbia Law Review* 475; John Braithwaite, 'Flipping Markets to Virtue with Qui Tam and Restorative Justice' (2012) *Accounting Organizations and Society* 1; John Braithwaite, 'Relational Republican Regulation' (2013) 7(1) *Regulation and Governance* 124.

For example - John Braithwaite has written a number of papers that consider the ways to improve regulation in the aged care industry. See for example - John Braithwaite et al, 'Raising the Standard: Resident Centred Nursing Home Regulation in Australia' (Aged and Community Care Division Department of Health, Housing and Community Services 1993), John Braithwaite, 'The Nursing Home Industry ' (1993) 18 *Crime and Justice* 11 and John Braithwaite, 'Regulating Nursing Homes: The Challenge of Regulating Caer for Older People in Australia ' (2001) 323 *British Medical Journal* 443. More recently Christine Parker and others have used the work by Colin Scott to consider the Egg Industry in Australia; and Christine Parker et al, 'Can the Hidden Hand of the Market be an Effective and Legitimate Regulator? The Case of Animal Welfare under a Labeling for Consumer Choice Policy Approach' (2017) 11 *Regulation and Governance* , 2

<sup>9</sup> Llewelyn, above n 7.



researchers to observe and view the world.<sup>10</sup> This research draws on regulatory theory to provide a suitable methodological approach and appropriate research methods. This research adopts a methodology and research methods that have been commonly used across social science, business and regulatory theory studies. Such an approach provides rigour by settling on the most appropriate methods across these disciplines to answer the research question. This need to choose from a suite of disciplinary research methods in order to find the most appropriate has long been regarded as appropriate by regulatory theorists such as Braithwaite.<sup>11</sup>

The theory that has been determined as being suitable for an examination of the current dog breeding regulation is set out in this Chapter, understanding that much of the world is socially constructed.<sup>12</sup> It is important to understand how stakeholders in dog breeding perceive breeding, how it is regulated and how that regulation addresses, or fails to address the issues. Regulatory theory is used in an applied way to consider how some regulatory components and some regulators are accountable to dogs and to dog owners.<sup>13</sup>

## PART III. REGULATORY STUDIES

### 1. Introduction

Regulatory studies explore: what regulation is; what principles are used by regulators; what alternative forms of regulation are available to regulators; how regulators themselves are made accountable; what makes people comply; and what type of regulation is most effective in achieving the stated objectives of the regulation.

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<sup>10</sup> Ibid and Kevin G. Corley and Dennis A Gioia, 'Building Theory About Theory: What Constitutes A Theoretical Contribution?' (2011) 36(1) *Academy of Management Review* 12, 12.

<sup>11</sup> John Braithwaite, 'For Public Social Science ' (2005) 56(3) *The British Journal of Sociology* 345 , 347.

<sup>12</sup> Dennis A Gioia, Kevin G. Corley and Aimee L Hamilton, 'Seeking Qualitative Rigor in Inductive Research: Notes on the Gioia Methodology' (2012) 16(1) *Organisational Research Methods* 15, 16.

<sup>13</sup> An applied approach is a legitimate use of concept theory. .Llewelyn, above n 7, 681. A case study such this provides an appropriate vehicle for exploring accountability. S Llewelyn, 'What Counts as "Theory" in Qualitative Management and Accounting Research? Introducing five levels of theorizing' (2003) 16(4) *Accounting, Auditing & Accountability Journal* 662, 693.

## 2. Regulatory Approaches & Theories

### 2.1 Introduction

When the term 'regulation' is used in this research, the definitions set out in the glossary are used. It extends to all laws, rules, regulations, codes and standards set down by the various regulatory authorities that have input into dogs, their ownership, management, welfare and care generally. Regulation can be made by any regulatory actor that plays a role in the regulatory state.<sup>14</sup> This starts with governments and extends to other regulatory actors, both private and public. The literature recognises that over the last 20 to 30 years other non-regulatory mechanisms and techniques have been developed and used by governments and other regulators to regulate and control behaviour. There is a recognition that any regulatory environment can incorporate both legal and non-legal mechanisms to signal appropriate behaviour to those that are being regulated. This can include law, social norms and market-based mechanisms.<sup>15</sup>

The decentralisation of regulation has provided regulators the opportunity to work with industry and other stakeholders in a number of ways in an effort to secure policy objectives without the use of legislation.<sup>16</sup> The study of regulation includes an examination of the theory of compliance and the various regulatory approaches, techniques and instruments that can be used to ensure compliance.<sup>17</sup> This Chapter examines a number of regulatory approaches and intervention strategies that are open to regulators. It considers a number of regulatory theories that examine

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<sup>14</sup> Martin Loughlin and Colin Scott, *Developments in British Politics* (Macmillan Education UK, 1997), 205, John Braithwaite, 'The New Regulatory State and the Transformation of Criminology ' (2000) 40(2) *The British Journal of Criminology* 222, 222 and Colin Scott, 'Private Regulation of the Public Sector' (2002) 29(1) *Journal of Law and Society* 56, 57 Regulatory state – the notion that regulation is no longer the sole domain of government using the traditional instruments of control. Control in a regulatory state in any one industry can vest with a number of regulatory actors, state and private, that exert various levels of control over the provision of regulatory services such as the setting of standards, monitoring and enforcement, through instruments of both statutory and non-statutory regulation. Scott, above n 4, 148.

<sup>15</sup> Brownsword, above n 3, 577.

<sup>16</sup> Scott, above n 4, 148.

<sup>17</sup> Julien Etienne, 'Compliance Theory: A Goal Framing Approach ' (2011) 33(3) *Law and Policy* 305, 306.

the role and function of regulation and the approaches that have been used previously in the fields of animal law and environmental law. Analysis of this theoretical literature assists in determining the most effective way of regulating dog breeding and, in turn, in making recommendations for change.

## 2.2 Approaches to Regulatory Enforcement

In the 1980s and 1990s many governments and regulatory authorities considered that the optimal regulation was the '*command and control*' approach. This involves the establishment of regulation imposing standards backed by criminal sanctions.<sup>18</sup> An example is the need to obtain a licence before breeding a litter of puppies with a fine imposed should a litter be bred and sold without a permit. Today command and control regulation remains but it is used more selectively, and often in combination with other regulatory tools.<sup>19</sup> This change could be viewed as a reaction to the criticism in the regulatory studies literature of using the command and control approach alone as being ineffective, not cost effective and too coercive.<sup>20</sup> As a consequence, other regulatory approaches have been developed, often drawing from other disciplines such as corporate governance, sociology and psychology.<sup>21</sup>

Another approach that has developed in the regulatory studies literature is the '*deterrence approach*'. An example might be, making dog owners strictly liable for any damage caused by their dogs roaming at large, in breach of management regulations. This approach suggests that people weigh up the cost and benefits of their actions. That is: if the cost of complying outweighs the benefit of not complying, people will choose not to comply. Factors that will be

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<sup>18</sup> A Ogus, *Regulation: Legal Form and Economic Theory* (Oxford University Press, 1994), 5.

<sup>19</sup> William J Altham and Turlough F Guerin, 'Environmental Self-Regulation and Sustainable Economic Growth: The Seamless Webb Framework' (1999) 6 *Eco-Management and Auditing* 61, 64 and Tapan K Sarker, 'Voluntary Codes of Conduct and their Implementation in the Australian Mining and Petroleum Industries: is there a Business case for CSR?' (2013) 2013(2) *Asian Journal Business Ethics* 205, 209.

<sup>20</sup> Christine Parker, *The Open Corporation* (Cambridge University Press, 2002), 14 and Michelle Pautz, 'Next-Generation Environmental Policy and the Implications for Environmental Inspectors: Are Fears of Regulatory Capture Warranted?' (2013) 12(3) *Environmental Practice* 247, 250

<sup>21</sup> Braithwaite, above n 4, 1.

considered are: the likelihood of enforcement and the size of the penalty for non-compliance. The more likely an inspection is and the more certain that a sanction will be imposed, the more likely it is that compliance will be obtained.<sup>22</sup> It has been argued that regulators should not adopt the deterrence approach on its own, as the deterrent effect of legal sanctions alone will often be insufficient to prevent harmful behaviour and to promote compliance.<sup>23</sup> Cunningham and Clinch note that there is much debate about what type of regulatory approach or style is the best at achieving compliance in various industries and with various types of regulations.<sup>24</sup>

One of the most significant approaches considered by the regulatory studies literature is work undertaken over 20 years ago by Ayres and Braithwaite, who provided the notion of a pyramid of sanction or enforcement, which they labelled the '*responsive regulatory approach*'.<sup>25</sup> Responsive regulation is regulation that is responsive to its environment and to the behaviour and conduct of those regulated by it. Such an approach considers the conduct of those that are regulated when assessing if a more or less interventionist approach is needed.<sup>26</sup> The idea is that the regulation that is best suited to its context, regulatory culture and history should be adopted.<sup>27</sup> An example might be a regulator using education to inform dog breeders of best breeding practice and following up an escalating set of enforcement strategies, inspections up to

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<sup>22</sup> Jon G Sutinen and K Kuperan, 'A Socio-economic Theory of Regulatory Compliance' (1999) 26(1/2/3) *International Journal of Social Economics* 174; Søren C Winter and Peter J May, 'Motivation for Compliance with Environmental Regulations' (2001) 20(4) *Journal of Policy Analysis and Management* 675.

<sup>23</sup> Christopher D Stone, 'The Place of Enterprise Liability in the Control of Corporate Conduct ' (1980) 90(1) *The Yale Law Journal* 1, 26 and Jodi L Short and Michael W Toffel, 'Making Self-Regulation More Than Merely Symbolic: The Critical Role of the Legal Environment ' (2010) 55(3) *Administration Science Quarterly* 361, 362.

<sup>24</sup> Brownsword, above n 3, 576.

<sup>25</sup> Ayres and Braithwaite, above n 4 and Christine Parker, 'Twenty Years of Responsive Regulation: An Appreciation and Appraisal' (2013) 7 *Regulation and Governance* 1, 3, Paul Verbruggen, 'Gorillas in the Closet? Public and Private Actors in the Enforcement of Transnational Private Regulation ' (2013) 7 *Regulation and Governance* 512, 524.

<sup>26</sup> Ayres and Braithwaite, above n 4 and John Braithwaite, 'Types of Responsiveness' in Peter Drahos (ed), *Regulatory Theory Foundations and Applications* (ANU Press, 2017) , 117.

<sup>27</sup> Ayres and Braithwaite, above n 25.

license suspension if breeders are not complying with the recommendations, requirements of the regulator.

A responsive regulatory approach has been adopted in many fields, as compliance practitioners and academics alike recognised the need to offer some way of balancing the competing aims of those who advocated deregulation of business with those who favoured stronger regulation. It remains at the core of much of the current regulatory theory literature, and its usefulness and effectiveness has been tested and supported by both academics and community practice in Australia.<sup>28</sup> It has influenced the regulatory style of several regulators concerned with improving environmental outcomes, consumer protection and a raft of other societal concerns.<sup>29</sup>

An important consideration when attempting to design a responsive regulatory approach is to understand that regulatees have their own motivations for complying with regulation. Each regulatees may hold a unique set of experiences and motivations that he or she factors in when deciding to comply or not comply with regulation.<sup>30</sup> He or she may exhibit a range of compliance positions. Some individuals seek to stay away from authority and dislike being put in a position where they perceive they need to comply with a rule that has been imposed upon them. Others are more comfortable with authority and complying with regulations imposed upon them. Motivational postures are the social signals that regulatees send to regulatory actors to indicate the degree to which they accept the way that the regulator is performing its functions. Having an insight into how confident regulatees are in regulatory actors is an important part of designing

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<sup>28</sup> Ibid and Braithwaite, above n 3, 20.

<sup>29</sup> Lynden Griggs, 'A Consumer Based Regulatory Pyramid to Improve Animal Welfare' (2009) (3) *Australian Animal Protection Law Journal* 7323, 88; Wood et al, above n 8, Braithwaite, above n 4,480 and 'Environmental Harm is a Crime: Legislation, Regulatory Models and Approaches to Compliance and Enforcement' (Briefing Paper No. 6, July 2012)' (2012) ) , 13; Ann Wardrop, 'Co-regulation, Responsive Regulation and the Reform on Australia's Retail Electronic Payment Systems ' (2014) 30(1) *Law in Context* 197 , 197; and Neil Gunningham, 'Enforcing Environmental Regulation ' (2011) 23(2) *Journal of Environmental Law* 169 , 169.

<sup>30</sup> Robyn Bartel and Elaine Barclay, 'Motivational Postures and Compliance with Environmental Law in Australian Agriculture' (2011) 27(2) *Journal of Rural Studies* 153 , 155.

an effective regulatory approach as regulatees that feel that they have meaningful contact with regulatory actors are more likely to comply.<sup>31</sup>

No model that attempts to fully describe and prescribe how to approach the preparation of effective regulation is without flaw. All approaches are vulnerable. A responsive approach however, has at its core a recognition that an effective regulatory approach integrates a number of strategies and components and is dynamic enough to change when necessary.<sup>32</sup>

### 3. Essential Components of a Responsive Regulatory Approach

Responsive regulation incorporates a multi-level integrated approach towards the enforcement of regulation. It uses an escalating range of regulatory tools and enforcement measures to gain a desired regulatory outcome. It provides a framework for the use of enforcement tools with lower level sanctions at the base and more severe enforcement measures at the top. This pyramid shape suggests a sequential model of enforcement, with the lower level enforcement tools being used more frequently.<sup>33</sup> Regulators can be responsive to how effectively organisations and individuals are regulating themselves. Braithwaite confirms that there is a place within a responsive regulatory environment for a number of different regulatory actors, each playing a dynamic role in building capacity to persuade those that they regulate, each with a role to play in deciding when and how to punish.<sup>34</sup>

Such an approach is responsive to the moves regulated actors make, to industry context and to its environment.<sup>35</sup> It is not possible for regulators to detect and enforce every contravention of the regulation that it administers so it is vital that regulators are able to be responsive to those whom they regulate and that they employ regulatory techniques that will best encourage

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<sup>31</sup> Valerie Braithwaite, Kristina Murphy and Monika Reinhart, 'Taxation Threat, Motivational Postures, and Responsive Regulation' (2007) 29(1) *Law & Policy* 137, 153.

<sup>32</sup> Braithwaite, above n 4, 135.

<sup>33</sup> Ayres and Braithwaite, above n 4 and Michelle Welsh, 'Civil Penalties and Responsive Regulation: The Gap Between Theory and Practice' (2009) 33(3) *Melbourne University Law Review* 908, 911.

<sup>34</sup> Braithwaite, above n 26, 118.

<sup>35</sup> Braithwaite, above n 8, 475.

compliance.<sup>36</sup> Those who are regulated need to understand the purpose behind regulation and be given the opportunity to suggest methods of finding a solution to the problem that the regulation is attempting to address. Responsive regulatory theory recognises that regulation that entices people to act in the most responsible way is to be encouraged.<sup>37</sup> It is more effective to try to persuade people to comply, rather than to punish them for not complying, particularly when the persuasion is backed up by punishment. There needs to be a range of regulatory techniques, moving from persuasion to punishment.<sup>38</sup> Grabosky and Braithwaite suggest that regulation that focuses on ensuring compliance rather than aiming to punish can be the most effective.<sup>39</sup> Six confirms that as part of a responsive approach or strategy there must be some level of trust by regulatees in the regulatory actors and that there is room for research that is able to consider the levels of trust that exists between regulatees and regulatory actors.<sup>40</sup>

The concept of responsive regulation incorporates the notion of '*smart regulation*', which is '*regulation that embraces 'flexible, imaginative and innovative forms of social control'*'<sup>41</sup> It highlights the importance of policy makers understanding how to combine different types of regulatory techniques and instruments to achieve desired outcomes.<sup>42</sup> Smart regulation first developed in the area of environmental regulation where State agencies were failing to

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<sup>36</sup> Braithwaite, above n 8 , 20 and Welsh, above n 33, 910.

<sup>37</sup> Philippe Nonet and Philip Selznick, *Law & Society in Transition: Towards Responsive Law* (Transaction Publishers 4th ed, 2009), xi and Braithwaite, above n 8, 10.

<sup>38</sup> Braithwaite, above n 4, 19, Healy and Braithwaite, above n , S56 and Welsh, above n 33, 910 and Gabrielle Simm, 'Regulating Sex in Peace Operations ' in Peter Drahos (ed), *Regulatory Theory Foundations and Applications* (ANU Press, 2017) , 420

<sup>39</sup> Peter Grabosky and John Braithwaite, *Of Manners Gentle: Enforcement Strategies of Australian Business Regulatory Agencies* (Oxford University Press, 1986)

<sup>40</sup> Frederique Six, 'Trust in Regulatory Relations ' 15(2) *Public Management Review* 163, 166.

<sup>41</sup> Neil Gunningham and Darren Sinclair, 'Smart Regulation ' in Peter Drahos (ed), *Regulatory Theory Foundations and Applications* (ANU Press, 2017) 133 , 133.

<sup>42</sup> Ibid, 140.

effectively regulate pollution.<sup>43</sup> It is recognised that animal law can learn from environmental law.<sup>44</sup> Researchers such as Abate confirm that animal welfare regulators should draw from the area of environmental regulation and adopt the same smart approach by embracing the use of co-regulation, quasi-regulation and industry or self-regulation in achieving compliance.<sup>45</sup>

A responsive regulatory approach recognises that to be successful, regulation is often reliant on cooperation between governments, regulatory bodies and industry. In industry domains where governments are not the sole provider of regulation, it is necessary to rely on business and industries to assist with meeting regulatory objectives by the development of a corporate or industry culture that becomes at least partly self-regulating. Gunningham confirms that it is not uncommon to rely on oversight from local communities and other third parties to supplement direct government regulation.<sup>46</sup> This approach to regulation continues to grow.

Regulatory space/network governance theory is an offshoot of responsive regulation theory recognising the expanding role of private actors in the regulatory space.<sup>47</sup> Parker, Scott and others recognise that adopting a collaborative approach can build capacity and effectiveness.<sup>48</sup> Braithwaite confirms that an approach to regulation that continues to improve by engaging with

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<sup>43</sup> Altham and Guerin, above n 19, 62.

<sup>44</sup> Randall Abate (ed), *What can Animal Law learn from Environmental Law* (Environmental Law Institute 2015), xxxi.

<sup>45</sup> Timothy Eccles and John Pointing, 'Smart Regulation, Shifting Architectures and Changes in Governance' (2013) *International Journal of Law in the Built Environment*, 72.

<sup>46</sup> N Gunningham, '"Environmental Law, Regulation and Governance: Shifting Architectures"', (2009) 21(2) *Journal of Environmental Law* 179, 200.

<sup>47</sup> Peter Drahos, 'Intellectual Property and Pharmaceutical Markets: A Nodal Governance Approach' (2004) 77(2) *Temple Law Review* 401, Colin Scott, Fabrizio Cafaggi and Linda Senden, 'The Conceptual and Constitutional Challenge of Transnational Private Regulation' (2011) 38(1) *Journal of Law and Society* 1, 1 and Andrea C Bianculli, Xavier Femandex-i-Marin and Jacint Jordana (eds), *Accountability and Regulatory Governance: Audiences, Controls and Responsibilities in the Politics of Regulation* (Palgrave Macmillan 2015), 6.

<sup>48</sup> Parker, above n ; Colin Scott, 'Speaking Softly Without Big Sticks: Meta-Regulation and Public Sector Audit' (2003) 25(3) *Law & Policy* 203, 213 and Christine Parker, 'Meta-Regulation: Legal Accountability for Corporate Social Responsibility?' in Doreen McBarnet, Aurora Voiculescu and Tom Campbell (eds), *The New Corporate Accountability: Corporate Social Responsibility and the Law* (2007), 3.



a wide network of regulatory actors provides a strong base for the regulatory pyramid.<sup>49</sup> Within such an approach is the need to determine the power of each of the regulatory actors. Such power depends on the degree of social, economic and political effectiveness and legitimacy of each regulatory actor.<sup>50</sup>

In some industries there is no central regulatory body or piece of regulation.<sup>51</sup> Instead, in these industries, the regulatory environment involves multiple sites of regulation, with power located throughout a network of private and public actors that deploy their regulatory capacities using their own resources.<sup>52</sup> At the crux of a network governance approach, where the regulatory environment is non-hierarchical is the recognition that such an environment can build on its flexibility by collectively employing mechanisms such as mutual surveillance, reporting and peer review in improving regulatory performance across all regulatory actors.<sup>53</sup> In industries where regulatory authority is shared between State and non-State actors some of the actors within the regulatory network may be interconnected.<sup>54</sup> This theory is attractive for use by social legal researchers as it is framed around a set of practices that can be observed every day.<sup>55</sup> Such an approach seeks to understand how regulation is experienced, and there is opportunity for those being regulated to play a role in ensuring that regulation is in line with public interest. To play

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<sup>49</sup> Braithwaite, above n 10, 476.

<sup>50</sup> Braithwaite, above n 3, viii and Emmanuelle Mathieu, Koen Verhoest and Joery Matthys, 'Measuring Multi-level Regulatory Governance: Organizational Proliferation, Coordination, and Concentration of Influence' (2016) 11(3) *Regulation and Governance* 252, 252.

<sup>51</sup> Parker, above n 6.

<sup>52</sup> Julia Black, 'Legitimacy and the Competition for Regulatory Share' (Working Paper LSE Legal Studies No 14/2009) [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1424654](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1424654) (2009) , 3 and Wardrop, above n 29, 201 and Verbruggen, above n 25, 512.

<sup>53</sup> Scott, above n 7, 354.

<sup>54</sup> Scott, above n 7, 337. A good example is the relationship between the RSPCA and the State and Territory Governments, each playing a role in enforcing animal welfare and anti-cruelty legislation and presumably enforcing the dog breeding codes that exist currently.

<sup>55</sup> Scott, above n 7, 362 and see Appendix 2 that shows that recently a number of States have set up enquiries to consider dog breeding in Australia.

this role, people who experience law and regulation need to be given a voice, to report on how regulation impacts upon them and how they perceive regulation and regulators.<sup>56</sup>

Healy and Braithwaite argue that regulators need to be aware of, and responsive to the culture and context of the regulatory environment and of those they seek to regulate when deciding whether a more or less interventionist approach is appropriate.<sup>57</sup> Braithwaite asserts that when considering how to improve a regulatory framework an effective approach is to assess its current strengths and then expand upon them. Building the capabilities of the regulated actors may be the most effective strategy in improving regulatory outcomes.<sup>58</sup>

This research recognises the usefulness of a responsive regulatory approach as a lens through which to consider the dog breeding regulatory environment. Such an environment has a plurality of regulators and responsive regulatory theory allows a consideration of a cooperative approach and the usefulness of both regulatory and non-regulatory technologies in achieving compliance.<sup>59</sup>

#### 4. Role and Effectiveness of Codes

There is a large volume of regulatory studies literature that explores and reflects on the existence and role of codes, both at industry and professional membership level as a part of self-regulation, where self-regulation is considered to be a regulatory process in which a business or an organisation sets rules and standard to regulate its own members.<sup>60</sup> Businesses have used

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<sup>56</sup> Parker, above n 25, 9 and Garry C Gray and Susan C Silbey, in Christine Parker and Vibeke Lehmann Nielsen (eds), *Explaining Compliance: Business Responses to Regulation* (Edward Elgar, 2011) , 135.

<sup>57</sup> Healy and Braithwaite, above n , S56 and Christie Ford, 'Prospect for Scalability: Relationships and Uncertainty in Responsive Regulation ' (2013) 7(1) *Regulation and Governance* 14, 15 and Wood et al, above n 8, 3.

<sup>58</sup> Braithwaite, above n 7, 481.

<sup>59</sup> Braithwaite, above n 7, 137.

<sup>60</sup> Virginia Haufler, *A Public Role for the Private Sector: Industry Self-regulation in a Global Economy* (The Brookings Institution Press, 2001), 3, Bindu Arya and Jane E Salk, 'Cross-Sector Alliance Learning and Effectiveness of Voluntary Codes of Corporate Social Responsibility ' (2006) 16(2) *Business Ethics Quarterly* 211, 212 and Short and Toffel, above n 23, 362 and Harry J Van Buren and Karen D Patterson, 'Institutional Predictors of and Complements to Industry Self-regulation with Regard to Labour Practices' (2012) 117(3) *Business and Society*

codes as part of self-regulation for at least the last 40 years and Graves notes that businesses often use them as a part of their key ethics program.<sup>61</sup> Other businesses use codes in an attempt to reduce the need for direct government intervention or as a way of meeting stakeholder expectations.<sup>62</sup> Governments are often keen to encourage the establishment of codes at industry level and there are government, both at Federal and State level that provide guidelines to Australian industries that are seeking to establish their own voluntary industry codes.<sup>63</sup> Reeve considers the role of code in self-regulation and cautions that any research that seeks to assess the usefulness of codes as part of self-regulation needs to consider more the impact that codes have on meeting their objectives and less on code development and implementation.<sup>64</sup> Theorists such as Ayres and Braithwaite and more recently Reeve believe that codes can play a role in models of co-regulation whereby governments require businesses or industry regulators to set rules that cover particular practices and then play a role in enforcing those rules.<sup>65</sup>

Codes of conduct can differ widely in their scope and in relation to the external socio-political and economic environment in which they operate, but they exist in a great number of industries

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Review 357, 359 and M. Magalhães-Sant'Ana et al, 'What do European veterinary Codes of Conduct Actually Say and Mean? A Case Study Approach' (2015) 176(25) *Veterinary Record* 654, 654.

<sup>61</sup> Brooke W Graves, 'Codes of Ethics for Business and Commercial Organization' (1924) 35(1) *International Journal of Ethics* 41, 42 and Magnus Frostenson, Sven Helin and Johan Sandstrom, 'The Internal Significance of Codes of Conduct in Retail Companies' (2012) 21(3) *Business Ethics: A European Review* 263, 263

<sup>62</sup> Ans Kolk and Rob Van Tulder, 'Multinationals and Codes of Conduct: Dynamics and Effectiveness' (Paper presented at the International Conference Voluntary Codes of Conduct for Multinational Corporations Zickline School of Business, Baruch College, City University of New York 2004), 4.

<sup>63</sup> Some examples are Commonwealth of Australia, 'Guidelines for Developing Effective Voluntary Industry Codes of Conduct' (Australian Competition and Consumer Commission 2011) <<http://www.accc.gov.au/system/files/Guidelines%20for%20developing%20effective%20voluntary%20industry%20codes%20of%20conduct.pdf>> and Tasmanian Integrity Commission and 'A Guide to Developing Codes of Conduct' (<[http://www.integrity.tas.gov.au/\\_\\_data/assets/pdf\\_file/0006/189555/A\\_Guide\\_to\\_Developing\\_a\\_Code\\_of\\_Conduct\\_.PDF](http://www.integrity.tas.gov.au/__data/assets/pdf_file/0006/189555/A_Guide_to_Developing_a_Code_of_Conduct_.PDF)>).

<sup>64</sup> Belinda Reeve, *The Food Pyramid meets the Regulatory Pyramid* (Doctor of Philosophy Thesis, PhD Thesis, University of Sydney 2014), 137.

<sup>65</sup> Ayres and Braithwaite, above n 4, Braithwaite, above n 4 and Reeve, above n 26, 114.

and are adopted by corporations and industries to show a commitment to improving practice, and respecting the society, community and industry in which they operate.<sup>66</sup> Codes can serve both business and social purposes and provide a standard where none exists. Prakash, Emelianova and Beckers argue that codes can also reduce the need for direct government regulation, provided their implementation is rigorous and stakeholders have been consulted during that process.<sup>67</sup>

The regulatory theory literature is mixed when it comes to an evaluation of the effectiveness of industry and business codes of conduct in achieving compliance with the objects of such codes. Parker looks at what motivates companies to adopt codes and asserts that they can be largely symbolic. Frostenson et al conclude in their research that codes often add very little in the regulatory mix for most organisations.<sup>68</sup> Other regulatory theory researchers such as Van der Heijden note that codes may be less effective in regulatory areas that are highly politicised and where substantial institutional capital is required in terms of knowledge required by policy makers and inspectors to enforce them.<sup>69</sup>

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<sup>66</sup> Bindu Arya and Jane E Salk, 'Cross-Sector Alliance Learning and Effectiveness of Voluntary Codes of Corporate Social Responsibility' (2006) 16(2) *Business Ethics Quarterly* 211.

<sup>67</sup> Sethi S Prakash and Olga Emelianova, 'A Failed Strategy of Using Voluntary Codes of Conduct by the Global Mining Industry' (2006) 6(3) *Corporate Governance* 226, 228 and Short and Toffel, above n , 361 and Harry J Van Buren and Karen D Patterson, 'Institutional Predictors of and Complements to Industry Self-regulation with Regard to Labor Practices' (2012) 117(3) *Business and Society Review* 357, 359 and Anna Beckers, 'Regulating Corporate Regulators through Contract Law? The Case of Corporate Social Responsibility Codes of Conduct' (European University Institute 2016), 11.

<sup>68</sup> Parker, above n , 26 and Arya and Salk, above n 66, Frostenson, Helin and Sandstrom, above n 61, 270 and Petrina Schiavi and Fiona Solomon, 'Voluntary Initiatives in the Mining Industry: Do They Work?' (2006) 53(Spring) *Greener Management International* 27, 30.

<sup>69</sup> Jeroen Van der Heijden, 'The New Governance for Low-Carbon Buildings: Mapping Exploring, Interrogating' (2016) 44(5-6) *Building Research and Information* 575, 576.

Researchers such as Salvioni et al and Kolk and Tulder conclude that properly constructed codes can enhance behaviour.<sup>70</sup> MacNeil suggests that a code that attempts to regulate conduct may be successful if it introduces a sense of professionalism into an industry.<sup>71</sup> Effective codes of conduct can assist towards instilling a corporate culture that is based on the organisation's core value. Cunningham and Clinch assert that to be effective codes should reflect the voices of all stakeholders and should be reviewed regularly to ensure they are kept up to date and relevant. Not only should codes be monitored and evaluated regularly, but they should also be supported by an effective system of complaints handling. Codes also need to be backed by sufficient resources and other appropriate mechanisms such as fines, penalties and other legal remedies that can be used by the body that is responsible for their enforcement. Cunningham and Clinch confirm that organisations need to possess the competence at an institutional level that enables this monitoring, enforcement and evaluation process.<sup>72</sup>

#### PART IV. REGULATORY APPROACHES IN ANIMAL WELFARE / ANTI-CRUELTY

There is a limited amount of literature that specifically focuses on how companion animals are regulated in Australia and even less literature that considers regulation of dog breeding.<sup>73</sup> One influential piece of work in the area of animal welfare regulation is a book by Radford, first published over 15 years ago in the United Kingdom. Radford asserts that it is better to have

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<sup>70</sup> Daniela M Salvioni, Riccardo Astori and Raffaella Cassano, 'Corporate Sustainability and Ethical Codes Effectiveness' (2014) 10(9) *Journal of Modern Accounting and Auditing* 969, 980 and Kolk and Van Tulder, above n , ibid, 11.

<sup>71</sup> Iain MacNeil, 'Rethinking Conduct Regulation' (2015) 30(7) *Butterworths Journal of International Banking and Financial Law* 413.

<sup>72</sup> James A Cunningham and J Peter Clinch, 'An Organizing Framework for the Implementation of Environmental Voluntary Approaches ' (2004) 14 *European Environment* 30, 37 and Arya and Salk, above n 66.

<sup>73</sup> John McEldowney, Wyn Grant and Graham Medley, *The Regulation of Animal Health and Welfare, Science, Law and Policy* (Hoboken, Taylor and Francis 2013), 18; and Geoff Bloom, 'Regulating Animal Welfare to Promote and Protect Improved Animal Welfare Outcomes under the Australian Animal Welfare Strategy' (2008) and P C Bennett and E Perini, 'Tail Docking in Dogs: Can Attitude Change Be Achieved?' (2003) 81(5) *Australian Veterinary Journal* 277 Fiona Borthwick, 'Governing Pets and Their Humans: Dogs and Companion Animals in New South Wales, 1966-98' (2009) 18(1) *Griffith Law Review* 185, 185

regulation in place that aims at improving outcomes for animals then to have no regulation.<sup>74</sup> Radford notes that it is up to politicians to decide upon the appropriate degree of protection afforded to animals by regulation, in light of both current veterinarian evidence and community expectations. The need for the input of various stakeholders is also deemed to be a vital step in the establishment of effective regulatory measures.<sup>75</sup> There is literature too that confirms that there is a role for codes that incorporate codes that detail welfare consideration for animals.<sup>76</sup>

Turning to Australian literature, Bloom extends Radford's approach and confirms that for a regulatory framework to be sustainable and to achieve its policy goals it must be flexible and responsive. Such a framework needs to contain effective procedures that can identify impediments to participation. Goodfellow suggests that an approach that is nationally consistent and that does not depend on the context of the animal is needed.<sup>77</sup> White and Goodfellow support the establishment of a regulatory approach that goes beyond the use of basic command and control and deterrence techniques.<sup>78</sup> Goodfellow sees a co-regulatory approach around the adoption of codes and standards as being the most appropriate model in terms of creating effective codes.<sup>79</sup> He is critical of the current approach that exists in Australia, which he believes at least in the regulation of farm animals, is too reliant on industry in developing animal welfare science to use in codes and standards. He is critical of the lack of appropriate enforcement and monitoring. He seeks regulatory reforms that see the establishment of an independent animal

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<sup>74</sup> Mike Radford, *Animal Welfare Law in Britain: Regulation and Responsiveness* (Oxford University Press 2001), 394.

<sup>75</sup> Ibid, 167.

<sup>76</sup> David J Mellor, 'Updating Animal Welfare Thinking: Moving beyond the "Five Freedoms" towards "A Life Worth Living"' (2016) 6(3) *Animals* 1, 7.

<sup>77</sup> Goodfellow, above n 6, 188.

<sup>78</sup> Steven White, 'Regulation of Animal Welfare in Australia and the Emergent Commonwealth: Entrenching the Traditional Approach of the States and Territories or Laying the Ground for Reform' (2007) 35 *Federal Law Review* 347, 352.

<sup>79</sup> Goodfellow, above n 6, 192.

ombudsman and a call for more involvement in the regulation of animal welfare by non-government organisations.<sup>80</sup>

Currently, as is the case with the regulation of farm animals, each State and Territory includes provisions in its prevention of cruelty/welfare legislation that impose either financial penalties or imprisonment for acts of cruelty against particular animals.<sup>81</sup> The deterrence approach can be seen in some forms of dog regulation as the police, local council inspectors and RSPCA inspectors all have power to inspect premises, seize abused animals and prosecute cruelty cases. When used effectively such powers can act as a deterrent within the community.

White notes that to be effective animal welfare agencies such as the RSPCA need to utilise a number of enforcement techniques and communication techniques, and to educate members of the regulated community.<sup>82</sup> Goodfellow has considered the role of community education in raising understanding by animal owners of what constitutes appropriate animal welfare. There is a recognition that for animal welfare regulation to be successful in terms of promoting better outcomes for animals, there needs to be a shift away from a legal process that is aligned with criminal sanctions towards a social process where all regulatory actors work together to solve issues and promote improved animal welfare standards.<sup>83</sup> Such a social process can be promoted within the framework of voluntary compliance with standards agreed upon by the community and aligned with best scientific practice.

Longer term, Goodfellow suggests a move towards a system that either includes independent animal welfare authorities, one where non-governmental and non-industry based regulatory actors are given a larger role in animal welfare or the creation of an independent government

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<sup>80</sup> Jed Goodfellow, 'Regulatory Capture and the Welfare of Farm Animals in Australia' in Deborah Cao and Steven White (eds), *Animal Law and Welfare - International Perspectives* (Springer International Publishing, 2016) vol 53, 195, 229.

<sup>81</sup> See s5 *Prevention of Cruelty To Animals Act 1979* (NSW).

<sup>82</sup> White, above n 4, 353.

<sup>83</sup> Goodfellow, above n 80, Radford, above n 74, 171 and Bloom, above n 75 and Margaret Rose, 'Challenges to the Development and Implementation of Public Policies to Achieve Animal Welfare Outcomes ' (2011) 1(1) *Animals* 69, 76.

entity that has the specific task of monitoring and auditing the performance of regulatory actors to reduce biases and inaction. These are all admirable stretch goals. This thesis takes a shorter focus and one that is realistic of the current impediments to the adoption of a national approach to animal welfare.<sup>84</sup> This is in light of the reality that the Federal Government has a minimal role in animal welfare strategy since 2013.

## PART V. NETWORK ANALYSIS APPROACH TO DOG BREEDING REGULATION

### 1. Introduction

As discussed in Chapter 2, dog owners and breeders are subject to animal welfare acts and local council regulations. That Chapter also showed that breeders are subject to any applicable State based breeding codes. Those that breed registered pure breeds are also subject to State or Territory based industry-breeding codes. All breeding businesses and individuals must comply with this regulation to avoid the consequences of non-compliance. The consequences of non-compliance will depend on the type of regulation and the effectiveness of the bodies that enforce the regulation. For example, non-compliance with anti-cruelty legislation can lead to large fines and imprisonment whereas failure to hold a permit, register a dog with a local council or register as a dog breeding business may lead to a fine or loss of the right to hold the permit, licence or right to be registered as a breeding business. Non-compliance with industry regulation may lead to exclusion from membership of the industry body.

### 2. Regulatory Space

In dog breeding, there are a number of actors within the regulatory space. State and local governments, the RSPCA and the ANKC all exercise power and influence over what breeders do, although the exact nature of the influence of these regulators over breeders remains unclear. The regulatory environment in dog breeding is not a top down environment where these regulators are clearly distinguishable from those regulated. It is instead more a bottom-up regulatory environment that currently relies on co-regulation of State breeding codes and self-regulation by industry codes. When it comes to pure breed dog breeding, there is even more

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<sup>84</sup> Goodfellow, above n 80, 227.



reliance on governance rather than hard law.<sup>85</sup> It is therefore appropriate to adopt a regulatory network governance approach to consider its effectiveness.<sup>86</sup>

Scott asserts that in such regulatory environments, the available resources may be better spread across that regulatory network between the various regulatory actors as some issues are better addressed by one regulatory actor than another.<sup>87</sup>

In dog breeding this may mean that some funding might be provided to the non-State regulatory actors to allow them to monitor the breeding codes.<sup>88</sup> Scott argues that for regulation to be responsive there is a role for the non-state actors to set standards, as some of these non-state regulatory actors have competence in designing and monitoring standards. Just how much of a role they can play though depends on their skill set. There is also a need to balance the role of non-State regulatory actors against the need to ensure a credible commitment from the State should the standards and monitoring done by the non-State regulatory actors fail or be perceived to be serving the interests of industry at the expense of the public.<sup>89</sup>

Industries change over time and each industry's regulation needs to be adaptable to these changes. In industries where there is not one central regulator, a host of institutions, and/or inspectorates, professional associations may establish the rules that guide behaviour. The various regulatory actors may all have different abilities to set and enforce these rules.<sup>90</sup> The reality might be that rules for some of the regulatory actors are written by drafters lacking legal

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<sup>85</sup> Brownsword, above n 3, 576.

<sup>86</sup> The term 'self-regulation' and why the statement is made here that the dog breeding regulatory environment is a bottom up environment is expanded upon later in this Chapter.

<sup>87</sup> Scott, above n 7, 332.

<sup>88</sup> This idea is raised in both Chapters 6 and 8.

<sup>89</sup> Scott, above n 4, 342 & 369 and Sarker, above n 19, 210.

<sup>90</sup> Welsh, above n 33, 925.

training, make the rules difficult to understand and enforce.<sup>91</sup> Although such rules may not be strictly enforceable by the Courts, they can still impact significantly on members in the industry and be binding as this soft law becomes normalised as the '*right thing to do*'.<sup>92</sup>

Stakeholder consultation is a key concept in the regulatory network provided there is an appropriate mix of industry regulation such as codes.<sup>93</sup> Brownsword recognises that regulators often face pluralism, that is, a number of different opinions about particular matters.<sup>94</sup> Clearly in relation to canine welfare this is the case. In cases where there are big differences of opinions about fundamental things such as animal welfare it is often hard for regulators to act effectively.<sup>95</sup> When there is a plurality of opinions and the need to set regulation, regulatory studies literature confirms that the expectation is that public opinion is sought before setting regulation, to seek out the reasonable position.<sup>96</sup> In dog breeding this has certainly been the case with Victoria, Queensland, New South Wales and Tasmania, all seeking public submission prior to the establishment of State based breeding and rearing codes.<sup>97</sup>

### 3. Self-Regulation in Pure Breed Dog Breeding

In pure breed dog breeding in Australia, self-regulation is used by the ANKC and the State and Territory canine associations. As has been considered in Part V of Chapter 2, each has a comprehensive set of regulations that includes a code of ethics for responsible breeding. The

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<sup>91</sup> Regulatory regimes incorporates three basic requirements: the setting of standards; processes for monitoring compliance and mechanisms for enforcing the standards. Christine Parker et al, *Regulating Law* (Oxford University Press, 2004), 2.

<sup>92</sup> Pauline Westerman, 'Breaking the Circle: Goal Legislation and the Need for Empirical Research' (2013) 1(3) *Theory & Practice of Legislation* 395, 397.

<sup>93</sup> Arya and Salk, above n , 212 and Rob van Gestel and Hans-Wolfgang Micklitz, 'Why Methods Matter in European Legal Scholarship' (2014) 20(3) (May 2014) *European Law Journal* 292, 306.

<sup>94</sup> Brownsword, above n 3, 581.

<sup>95</sup> Ibid, 582.

<sup>96</sup> Ibid, 583. Deliberate democracy – listening to competing points of view and coming to a decision that finds common ground or that at least respects competing points of view. In action such a course is not straightforward.

<sup>97</sup> See Appendix 3. From 2011 these States have sought public opinion on proposed breeding codes.

purpose of such regulation is to enhance sustainable breeding practices for breeders of registered pure breed dogs. The regulatory studies literature recognises that the buyers of the products, in this case registered pure breed dogs, need to be confident that the promised conditions, healthy companion dogs, have been met or else there is no point in paying more to have the protection of the regime.<sup>98</sup>

Another layer of self-regulation for pure breed and registered dog breeders comes from the national and State and Territory breed councils and associations. In Australia there are approximately 30 national breed councils and over 250 State and Territory breed associations, clubs and societies. Little is known about how many members they have, how they distribute information on issues in dog breeding to their members and what is being done by those members.

Gordon and Miyake recognise that some firms and industries may adopt a voluntary code of conduct in an attempt to avoid compulsory government regulation, and to show a commitment to socially acceptable behaviour and self-regulation.<sup>99</sup> For the industry bodies in dog breeding this suggests that having codes in place may demonstrate a willingness to ensure that their breeder members are breeding dogs responsibly, and that their members do not need to be further regulated by the state governments.

The network governance approach provides a way of assessing regulatory effectiveness that recognises that industries and regulation continually change, as do the roles of the regulatory actors within the regulatory environment.<sup>100</sup> It is this approach that is used in this research to consider the fundamental research question:

*What is the role and effectiveness of regulation in dog breeding in Australia?*

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<sup>98</sup> Scott, above n 7, 363.

<sup>99</sup> Kathryn Gordon and Maiko Miyake, 'Deciphering Codes of Corporate Conduct: A Review of their Content ' (1999) *OECD Working Papers on International Investment* 1999/02 , 3 and Van Buren and Patterson, above n 67.

<sup>100</sup> Ford, above n 57, 15 and Parker, above n 57, 5.

## PART VI. MEASURES OF EFFECTIVENESS OF REGULATION

### 1. Introduction

Regulatory theory recognises the shifting nature of the relationships and roles of private and public regulatory actors, so it is not surprising that this theory provides mechanisms to assess regulatory effectiveness in this research. The basic functions of a regulatory regime, and the regulatory actors within it, are to set standards, monitor compliance and penalise noncompliance.<sup>101</sup>

Any measure of the effectiveness of regulation must consider the intended objective or purpose of the regulation. As regulation in dog breeding is on a State by State basis the objectives of the regulation in Victoria is considered, both at State and Industry level. Section 1 of *the Domestic Animals Act 1994* (Vic) provides:

*The **purpose** of this Act is to **promote animal welfare**, the responsible ownership of dogs and cats and the protection of the environment by providing for—*

*(d) a registration scheme for domestic animal businesses domestic animal which promotes the maintenance of standards of those businesses; and*

*(da) the regulation of matters relating to the breeding and sale of dogs and cats; and*

The industry code that exists in Victoria does not contain a purpose of objects clause. Clause 1.4 of the constitution of the Victorian Canine Association Inc (VCA), however provides that the principal objectives of the VCA are (inter alia):

- 1. To promote breed improvement of the purebred dog, to promote wide human interest in all VCA registered dogs and to secure proper appreciation and recognition of their place in human society.*
- 2. To promote and raise the standards of breeding, rearing, keeping, and sale of pure bred dogs and the general welfare of all dogs.*
- 3. To promote and encourage the regulation of breeding of pure bred dogs and the registration of such dogs and their progeny with the VCA.*

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<sup>101</sup> Jason M Solomon, 'New Governance, Preemptive Self-Regulation, and the Blurring of Boundaries in Regulatory Theory and Practice' (2010) Faculty Publication (680) *College of William & Mary Law School* 591 , 596.

4. *To promote and encourage the recreation, sport, exhibition and training of VCA registered dogs and to provide facilities for those purposes.*
5. *To promote and encourage membership of the VCA and to promote the advantages and privileges of membership.*
7. *To educate members, affiliated bodies and the general public on canine matters and to inform members and affiliated bodies on all other matters of concern or interest to them.*
8. *To obtain affiliation with or membership of international canine bodies and maintain membership with the Australian National Kennel Council for the purpose of achieving international and national uniformity in all canine matters so long as the objectives, decisions and rulings of the international canine bodies and Australian National Kennel Council are compatible with the objectives and domestic rules, regulations and operations of the VCA.*
9. *To liaise, cooperate and reciprocate with other recognised state, territorial and international canine controlling bodies in matters of common interest or concern and of mutual benefit.*
10. *To promote and assist and to make contributions to canine veterinary research, the preservation of canine records and artefacts of historical significance and to other worthy causes.*
12. *To obtain recognition of the VCA and its affiliates as expert authorities on canine matters, and in particular, the sport and recreation of exhibiting VCA registered dogs.*
13. *To make representations to and to negotiate with all Government authorities on matters relating to dogs.*

Both the State Government Act and the State Industry code/constitution have as purposes in relation to breeding: -

- the promotion of dog welfare; and
- the regulation/registration of breeding; and
- the raising of standards in breeding.

The questions are:

- how can the meeting of these purposes be assessed? and
- how can the effectiveness of these regulations be judged to be effective?

Those who are charged with evaluating regulatory performance can find it difficult to move away from evaluations that focus extensively on rule making and not on the fuller regulatory environment and the actors within it. One reason is simply that it can be difficult to assess regulatory effectiveness when there are different regulatory actors using different types of regulation and where what is being regulated is politically complicated.<sup>102</sup> It is recognised that policy around dog breeding in Australia is impacted by political influence, as animal welfare is seen by different political groups to be of varying importance. Therefore, it is important that any evaluation of effectiveness reflects on how political influence can impact dog breeding policy

In dog breeding, the issues of dog welfare and the rights of breeders can be in conflict. This research is mindful of the culture and context within the industry. The various regulatory actors have different roles and stakeholders have different views on what regulation is necessary and what the purpose of regulation is.<sup>103</sup> Scott posits that possession of formal legal authority often does not determine how authority is exercised. The private governance arrangements also need to be considered and assessed where any true measure of the effectiveness of any regulatory regime is being sought.<sup>104</sup>

The extensive examination of the literature, case law analysis, and industry insight undertaken for this thesis provides an understanding of the roles the non-State regulatory actors play in dog breeding in Australia. This examination illustrates the importance of understanding who is accountable for what part of the framework. With this understanding, the measures that are set out below have been developed to measure the effectiveness of the regulation and regulatory actors.<sup>105</sup>

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<sup>102</sup> Robert Baldwin, Martin Cave and Martin Lodge, *Understanding Regulation: Theory, Strategy, and Practice* (Oxford University Press, 2nd ed, 2012), 36 and Scott, above n 7, 367

<sup>103</sup> Healy and Braithwaite, above n 57 and Scott, above n 7, 334 and Brownsword, above n 7, 576.

<sup>104</sup> Scott, above n 7, 336.

<sup>105</sup> Ibid, 339 (An environment where there is some interconnectedness between the regulatory actors there is a kind of extended accountability and this can reduce regulatory capture as more actors need to be captured before the overall framework can be said to be ineffective. Scott makes the point that where a regulatory framework does contain a lot of self-regulation formal accountability may be weak. Page 338).

In dog breeding, canine associations can play an active role in ensuring those who breed pure breed dogs do so in a way that ensures the welfare of their dogs.<sup>106</sup> Consideration of the role that the ANKC and the State and Territory canine associations currently play and what role they or a body that regulates breeders can play into the future is an integral part of this research.

## 2. Deciding on Appropriate Measures

Having briefly examined the notion of regulatory space and noted that such a concept is useful in assessing regulatory effectiveness, the actual measures against which effectiveness is to be assessed need to be established. Scott asserts that it must be recognised that:

*.... effective regulation is the product of the resources, perspectives and relationships of the various actors with the space.*<sup>107</sup>

Assessing the effectiveness of regulation requires an understanding of what regulation is seeking to achieve, how it should be implemented, who is being regulated and what the appropriate mechanisms are for making these people aware of the obligations it imposes.<sup>108</sup> Legal rules and regulations are not aims in themselves and they are capable of performing multiple functions. Before we can assess the effectiveness of regulation we need to be clear on its purposes and policy objectives and how its effectiveness is going to be measured in terms of each of these functions and objectives.

There are no hard and fast rules when it comes to measuring the effectiveness of regulation. A number of the functions or purposes of regulation can be in conflict. For example, measuring effectiveness in terms of certainty would suggest that regulation should not change over time, but other measures of effectiveness would suggest that regulation needs to be flexible and tailor-made to the circumstances at hand. As the regulation that is being considered in this thesis

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<sup>106</sup> Dogs NSW, 'Companion Animals Breeding Practices in New South Wales Submission to NSW Government Parliamentary Inquiry' (2015) <[https://www.parliament.nsw.gov.au/ladocs/submissions/42641/Submission%20237a%20-%20Dogs%20NSW%20\(Supplementary\).PDF](https://www.parliament.nsw.gov.au/ladocs/submissions/42641/Submission%20237a%20-%20Dogs%20NSW%20(Supplementary).PDF)>.

<sup>107</sup> Scott, above n 7, 347.

<sup>108</sup> Radford, above n 74, 345.

is aimed at assisting dogs and those who acquire dogs from breeders, this research uses a combination of the measures for effectiveness identified by Scott and those that have been set out previously in animal welfare literature particularly by Radford in the UK and White in Australia.<sup>109</sup>

This research considers the following two measures:

1. Does the regulation meet its intended objectives?
2. Are stakeholders aware of it?

### 3. Meeting Intended Objectives

Before any regulation is established, those creating it must be clear on its objectives. The regulator must also be aware that the attainment of a goal, such as changing the behaviour of those being targeted by the regulation, may be just one function of regulation.<sup>110</sup> Regulation commonly has a number of other functions that can be assessed against a number of different criteria, making assessing its effectiveness complex. There may be a whole raft of policy objectives behind regulation such as: enforcing private arrangements; imposing criminal sanctions; regulating private activities; giving standing to public officials; or the provision of a guide for good behaviour.<sup>111</sup>

There is no animal welfare or dog breeding literature that prescribes a comprehensive way to assess effectiveness of the regulation that impacts upon dog breeders. Radford in his 2001 text on responsive animal law regulation provides some guidance, and these guidelines are used in this thesis in conjunction with those that are found in the responsive regulatory theory literature, in particular the regulatory space literature. Radford suggests that responsive regulation must meet its primary objectives, to ensure animals are treated in accordance with

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<sup>109</sup> Ibid, 345 and Scott, above n 7, 40 and Steven White, 'Legislating for Animal Welfare: Making the Interests of Animals Count' (2003) 28(6) *Alternative Law Journal* 277.

<sup>110</sup> Westerman, above n 92, 412.

<sup>111</sup> Ibid, 411.



standards, and if they are not being treated fairly that there must be mechanisms in place that allow authorities to take steps to ensure that the welfare of animals does not continue to be compromised.

#### 4. Stakeholders Awareness and Understanding

Another method of measuring effectiveness that is considered both in the literature on regulatory failure and in animal welfare literature is to measure how aware regulatees are about the regulation and how well regulation is both understood and complied with. The nature of the legal responsibilities that regulation imposes must be clear in terms not only of its objectives but also in its context and scope.<sup>112</sup> People must be aware of the regulation and understand if it imposes a positive or negative obligation and if it is mandatory or discretionary.<sup>113</sup> Regulatees cannot comply with regulations that they are not aware of or do not understand. They will not feel motivated to comply with rules made by a regulatory body that they do not respect or one that attempts to uphold policies that do not align with their own personal morals.<sup>114</sup>

Regulatory effectiveness may be considered in terms of its operational success and how flexible the regulation is in terms of its ability to evolve through a cycle of direction, detection and correction.<sup>115</sup> This research recognises that an important aspect of operational success is that regulation reflects the attitudes, values and culture of the community it serves. With respect to

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<sup>112</sup> Ann Seidman and Robert B Seidman, 'Iltam: Drafting Evidence-Based Legislation for Democratic Social Change' (2009) 89 *Boston University Law Review* 435, 456.

<sup>113</sup> Radford, above n ; Mike Radford, *Animal Welfare in Britain: Regulation and Responsibility* (Oxford University Press 2nd ed, 2002), 348 & 352.

<sup>114</sup> Some of the literature suggests codes are often used due to shrinking regulatory budgets that encourage industry to adopt their own internal regulatory structures in the hope that they will increase compliance and achieve regulatory goals. Organisation For Economic Co-Operation and Development (OECD), 'Reducing the Risk of Policy Failure: Challenges For Regulatory Compliance' (2000) <<http://www.oecd.org/regreform/regulatory-policy/1910833.pdf>> and Organisation For Economic Co-Operation and Development (OECD, 'Supervision and Enforcement in Corporate Governance' (2013) <<http://www.oecd.org/daf/ca/SupervisionandEnforcementinCorporateGovernance2013.pdf>> 9 and Jeffrey K Randall, 'Improving compliance in US federal fisheries: An enforcement agency perspective' (2004) 35(4) *Ocean Development and International Law* 287, 300.

<sup>115</sup> Brownsword, above n 3, 576.

regulation that attempts to improve outcomes for animals the voices of stakeholder groups are important. Dogs must rely on the various stakeholder groups to advocate for them. Stakeholders play a role in advocating for dogs. If stakeholders understand and view the issues as significant and understand how regulation can impact on the issues they can lobby for change. Companion dog buyers who are aware of the issues can also create change by making more informed acquisition choices.

This research uses data around awareness and understanding. It does not seek to measure the effectiveness of all regulation that impacts upon dog breeding in Australia but limits itself to a consideration of the effectiveness of the State and industry breeding codes.

## PART VII. MEASURES OF EFFECTIVENESS OF REGULATORY SPACE

### 1. Introduction

There is no one body that specifically makes recommendations or plays a role in the implementation of regulation and licensing of all dog breeding in Australia. The statutory responsibility for implementing and enforcing dog protection and dog welfare legislation falls to a number of different agencies. Dog breeding is not alone in this regard, as the same can be said for the breeding of the majority of companion animals, whereas national industry bodies provide oversight of breeding of most farm animals in Australia.<sup>116</sup>

### 2. Industry Regulatory Actors

In the regulatory environment around dog breeding the different regulatory actors that have been identified in Chapter 2 have different levels of ability to send out signals and to change behaviour of dog breeders. To be an effective industry regulatory actor, a body such as the ANKC needs to provide quality regulatory oversight, effective monitoring and enforcement of their rules. As the primary regulator and promoter of responsible dog ownership, pure breed dog

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<sup>116</sup> The pork industry body is Australian Pork Limited, *The Producer Owned Organisation Supporting and Promoting the Australian Pork Industry* (2014) <<http://australianpork.com.au/about-us/australian-pork-limited/>> and The chicken meat industry body is Australian Chicken Meat Federation Inc, *Australian Chicken Meat Federation - the peak coordinating body for participants in the chicken meat industries in Australia* (2013) <<http://www.chicken.org.au/>>.

breeding, showing, trialling, obedience and other canine related activities the ANKC has a role to play in making, monitoring and enforcing the *National Code of Ethics of Responsible Dog Ownership*.<sup>117</sup>

The ANKC is not the only industry body that promotes responsible pet ownership and/ or pedigree registration services for dog breeders. There is also the Pet Industry Association of Australia (PIAA) that asserts it is the peak body for the pet industry.<sup>118</sup> There are also 2 smaller dog registration bodies – the Master Dog Breeders Association (MDBA) and the Pet Dog Breeders of Australia Association (PDBAA). Whilst all are stakeholders when it comes to a consideration of dog ownership, dog welfare and dog breeding, none can be said to be a true industry body that acts for and regulates all dog breeders. Currently ANKC only regulate breeders who are their members and who breed pure breed dogs.

Australian researchers such as King, Marston and Bennett support the general professionalisation of the dog breeding industry, much like cattle breeders and sheep breeders who have established industry groups to support and fund research.<sup>119</sup>

### 3. Deciding on Appropriate Measures

A number of regulatory approaches/styles have been examined in this Chapter and as a result a responsive network analysis approach was selected to consider the regulation of dog breeding. Within responsive regulatory theory, two consistent themes to measure the regulators' effectiveness emerge: first, the strength or level of legal authority (quality regulatory oversight, monitoring and enforcement);<sup>120</sup> and secondly, the level of legitimacy (respect, awareness and

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<sup>117</sup> Scott, above n 7,361.

<sup>118</sup> Pet Industry Association of Australia, *About the Pet Industry Association of Australia (PIAA)* (2017) <<https://piaa.net.au/about/>>.

<sup>119</sup> T King, L C Marston and P C Bennett, 'Breeding Dogs for Beauty and Behaviour: Why Scientists Need to do more to Develop Valid and Reliable Behaviour Assessments for Dogs kept as Companions' (2012) 137(1-2) *Applied Animal Behaviour Science* 1, 9.

<sup>120</sup> Brownsword, above n 7, 573 and Wardrop, above n 29, 226

an assurance of accountability of regulatory actors by regulatees).<sup>121</sup> These two themes provide a framework for consideration of components of the regulatory framework, and of how stakeholders view the use of these components by the regulatory actors. To assess the level of authority this research looks at the monitoring and enforcement capabilities of the regulatory actors. To assess the level of legitimacy, this research considers the accountability of the regulatory actors.<sup>122</sup>

#### 4. Monitoring and Enforcement

In any regulatory environment, there must be quality regulatory oversight, effective monitoring and enforcement of the rules and regulations by regulators that understand the regulatory environment.<sup>123</sup> Those being regulated need to be aware that regulators are willing and able to inspect and enforce regulation, as when inspection frequencies are high there is a higher likelihood of detection. Randall notes that when the target group is aware that there is little chance that they will be inspected, there may be a greater incentive for non-compliance.<sup>124</sup> A method of ensuring that those being inspected are aware that there is a real chance that their activity, premises, as the case may be may be the subject of targeted inspection or enforcement.<sup>125</sup> Radford asserts that monitoring and enforcement is essential, as without it legislation that is aimed at protecting animals against cruelty is unable to serve its purpose. The way that animals are treated needs to be monitored so that problems can be identified, and improvements put in place to promote best practice, thereby raising welfare standards.

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<sup>121</sup> Wardrop, above n 29.

<sup>122</sup> Colin Scott, 'Spontaneous Accountability' (2006) Dowdle, M. (ed.). *Public Accountability: Designs, Dilemmas and Experiences* 1, 2.

<sup>123</sup> Brownsword, above n 7, 573 and Wardrop, above n 29, 226

<sup>124</sup> Randall, above n ,114, 296.

<sup>125</sup> Peter J May and Søren C Winter, 'Reconsidering Styles of Regulatory Enforcement: Patterns in Danish Agro - Environmental Inspection' (2002) 22(2) *Law & Policy* 143, 152.

Monitoring also enables evidence to be obtained where necessary, to pursue formal action against those who fail to meet their legal obligations.<sup>126</sup>

Radford suggests that for regulation to be effective, regulators need to adopt a cycle of direction, detection and correction together with continual interpretation, adjustment and discussion. To secure compliance with prescribed standards for dog breeding by either persuasion or compulsion depends in the first instance on efficient inspection and detection.<sup>127</sup>

One of the most significant characteristics of any regulatory environment that purports to assist animals is that the subjects of the regulation have no ability to assert or protect their own interests.<sup>128</sup> For regulators to gain respect from those who own animals is difficult. Regulation must make clear what levels of care animals need and give owners the opportunity to provide this care and, educate them around this. Those that are in a position to impact upon a dog's welfare (in this context, dog breeders), must be aware of the regulation that exists to protect dogs. Breeders need to be aware that regulatory actors will sanction those who do not provide adequate care.<sup>129</sup>

## 5. Regulator Accountability

The second theme that is examined in the regulatory space literature is the level of legitimacy and trust.<sup>130</sup> There must be an awareness of and trust and respect towards the regulatory body by those being regulated, and this comes from knowledge that the regulator is accountable. Both the terms 'accountable' and 'regulatory accountability' have been defined in the glossary. Despite the provision of these succinct definitions, business, management and regulatory studies

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<sup>126</sup> Radford, above n 74, 368.

<sup>127</sup> Ibid, 368.

<sup>128</sup> Goodfellow, above n 80,199.

<sup>129</sup> Radford, above n 74, 345.

<sup>130</sup> Wardrop, above n 29,226 and Six, above n 40, 166.

confirms that the concept can be elusive, and that accountability is defined slightly differently in the various disciplines.<sup>131</sup>

In this research, regulatory accountability is considered in terms of how responsive and involved the regulator (in this instance the ANKC) is: to dog owners and dog breeders. Regulatees and stakeholders must feel that the regulatory actors are accountable, that is they must be assured that regulators are doing what they are there to do, that they are responsive to their members, and that they uphold a transparent regulatory process. A range of values is used in assessing accountability. Does the regulator:

- apply rules fairly and equally;
- provide value for money;
- offer continuity in the ways it operates; and
- maintain a dialogue with multiple stakeholders to ensure that the regulation achieves the most desired societal goals? <sup>132</sup>

Networking of the private and public regulatory actors in responsive regulatory environments is vital to ensure that the various regulatory mechanisms are achieving their objectives.<sup>133</sup>

Braithwaite argues that to be effective, a regulator must be responsive to both the regulated community and to its stakeholders. Effective regulators need to accept that, even if part of a bigger regulatory environment, they have a role to play in this environment and, they should be self-autonomous and play their part in instilling change in the culture of those that they regulate.<sup>134</sup> Each regulator must also play an effective role in providing effective regulatory oversight. Once each regulator understands its own role, it is useful to look at the

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<sup>131</sup> Lars Lindkvist and Sue Llewelyn, 'Accountability, Responsibility and Organization' (2003) 19(2) *Scandinavian Journal of Management* 251, 255 and Bianculli, Fermandex-i-Marin and Jordana, above n 47, 6.

<sup>132</sup> Scott, above n 7, 42 and Scott, above n 7, 35 & 372 and Bianculli, Fermandex-i-Marin and Jordana, above n 47, 6.

<sup>133</sup> Braithwaite, above n 4, 138.

<sup>134</sup> John Braithwaite, 'Responsive Excellence' (2015) *Penn Program on Regulation* 1, 3.

interdependence of the regulators within the policy domain.<sup>135</sup> This interdependence can then be identified and mapped, which assists in considering the extended accountability of the regulatory actors collectively.<sup>136</sup>

Within a complex network of accountability, if the effectiveness of each regulator can be assessed and the relationships between the different regulators understood and then mapped, then each might hold each other more accountable. These less formal and more hidden accountability mechanisms extend beyond what the courts or Parliament can do and can extend to both private and public actors to make them accountable for their actions. However, Scott notes that accountability is not linear, the various accountability networks that operate within each policy domain have their own complex systems of checks and balances, each playing a role in encouraging or prohibiting behaviour. Any attempt to evaluate the effectiveness of a regulatory space needs to assess both the effectiveness of each regulatory actor and the aggregate accountability of each of them within the regulatory regime.<sup>137</sup>

## PART VIII. CONCLUSION

This Chapter has detailed the regulatory theory that allows a consideration of the research question by providing a number of methods to assess the effectiveness of the regulation that currently exists in dog breeding in Australia. This Chapter has also outlined a number of regulatory approaches that are in use in industries across Australia. Through a consideration of these approaches and how they have changed over time it is determined that a responsive regulatory approach that recognises that the dog breeding regulatory framework contains a number of different regulatory actors is appropriate. This review of regulatory approaches confirms that it is appropriate to recognise that there are a number of regulatory actors that

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<sup>135</sup> Julia Black, 'Decentring Regulation: Understanding the Role of Regulation and Self-Regulation in a 'Post-Regulatory World'' (2001) 54 *Current Legal Problems* 103, 109.

<sup>136</sup> Scott, above n 7, 50.

<sup>137</sup> Ibid, 58 & 60.

have influence in dog breeding in Australia and each has a role in regulating those within the industry.

The review of the literature that is set out in this Chapter also provides a number of methods for evaluating both the regulation and the regulatory actors that exist in the dog breeding industry. This Chapter has also reviewed the literature that has considered the regulatory approaches that exist in animal welfare and anti-cruelty regulation in Australia. This literature is not extensive, but the review assisted this research in confirming that a network/governance approach is appropriate.

Responsive regulatory theory provides a methodological approach and affirms the appropriateness of the methodology and methods that will be used for the empirical components of this research, which are set out in the next Chapter. These methods provide an appropriate approach to consider a regulatory environment that contains several components, a number of regulatory actors and a level of complexity.



## CHAPTER 5: METHODOLOGY AND METHODS FOR EMPIRICAL COMPONENT

### PART I. METHODOLOGY

#### 1. Introduction

This research adopts a methodological approach and research methods that are appropriate for research in the fields of law and regulation as has been considered in Part V of Chapter 1.

#### 2. Methodological Approach

The empirical component of this thesis implements a socio legal research methodology drawing upon knowledge, theories and methods from other disciplines as appropriate for research that considers the effectiveness of regulation.<sup>1</sup>

The methodology adopted is evaluative, critical and pragmatic.<sup>2</sup> It is evaluative in the sense that it evaluates regulation, and it is critical in the sense that the inquiry that is made goes beyond the surface to examine not just the regulation but perceptions around it, with a view to making change. The methods adopted are both qualitative and quantitative. Data is collected around: perceptions of the major issues in dog breeding; the role and effectiveness of regulation; the types of regulatory techniques that are currently being used; and those techniques that the stakeholders in dog breeding believe will enhance outcomes for dogs and dog owners.

The research is interpretive, as it seeks to understand the perceptions of the stakeholders in dog breeding to gain an in-depth understanding of the research question using the 5 data sets that have been collected.<sup>3</sup> It is critical, as it goes beyond considering subjective reality and endeavours to uncover the real issues that exist in dog breeding, as identified by the literature and by the stakeholders. This research analyses the viewpoints and experiences of stakeholders

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<sup>1</sup> John Hasnas, Robert Prentice and Alan Strudler, 'New Directions in Legal Scholarship: Implications for Business Ethics Research, Theory, and Practice. ' (2010) 20(3) (June 2010) *Business Ethics Quarterly* 503, 504 and 496.

<sup>2</sup> W Lawrence Neuman, *Social Research Methods: Qualitative and Quantitative Approaches* (Pearson Education Inc., 5th Edition ed, 2003), 81 and 524 and Juliet Corbin and Anselm Strauss, *Basics of Qualitative Research 3e* (Sage Publications 2008), 11.

<sup>3</sup> Norman K Denzin and Yvonne S Lincoln, *Handbook of Qualitative Research* (Sage Publications, 1994), 2.

with the purpose of reflecting on the issues and the role and effectiveness of regulation in addressing them.<sup>4</sup> How these stakeholders regard the regulation and its role in addressing issues are vital pieces of the legal landscape.<sup>5</sup>

## PART II. EMPIRICAL METHODS

### 1. Introduction

*Legal research needs to be more open and articulate about its methods.*<sup>6</sup>

Legal research is doctrinal, often based on case law analysis. Business research is more data driven. Regulatory research adopts research methods from a suite of disciplines, including law and business.<sup>7</sup> This Chapter speaks to legal, business and regulatory communities.<sup>8</sup> It describes methods used in collecting and interrogating the data used in this research.

### 2. Research Question and Components

The *overarching question* that this research seeks to answer:

*What is the role and effectiveness of regulation in dog breeding in Australia?*

Regulatory research does not employ a single mechanism to answer the questions posed. It involves a consideration of the interplays between structures and the actors within a regulatory environment over time at different levels.<sup>9</sup> To ensure that this research is able to provide both a description and explanation of the role of regulation in dog breeding the analysis of this research

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<sup>4</sup> Neuman, above n 2, 82.

<sup>5</sup> Reza Banaka, 'Having One's Cake and Eating it Too: The Paradox of Contextualism in Social-Legal Research' (2011) 7(4) *International Journal of Law in Context* 487, 496.

<sup>6</sup> Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17(1) *Deakin Law Review* 83, 86. and Dvora Yanow and Peregrine Schwartz-Shea, *Interpretation and Method : Empirical Research Methods and the Interpretive Turn* (M E Sharpe Inc, 2nd ed, 2014), xv.

<sup>7</sup> Ibolya Losoncz, 'Methodological Approaches and Considerations in Regulatory Research' in Peter Drahos (ed), *Regulatory Theory Foundations and Applications* (ANU Press 2017) 784, 77.

<sup>8</sup> Hutchinson and Duncan, above n 6, 86. and Yanow and Schwartz-Shea, above n 6, xv.

<sup>9</sup> Losoncz, above n 7, 79.

question is divided into 4 components. This research is underpinned by both doctrinal and theoretical analysis of the current regulation of dog breeding in Australia. The four research components are:

1. *What are the major issues facing dog breeding in Australia, as perceived by key stakeholders, and how do those stakeholders believe these issues can be addressed?*
2. *What are stakeholder perceptions of the role of regulation in dog breeding?*
3. *How effective is the current regulatory environment in ensuring appropriate canine welfare and outcomes for consumers?*
4. *What are the drivers for consumers and breeders in dog breeding?*

The research establishes a framework for change that outlines how the regulatory environment should be changed to ensure appropriate canine welfare and outcomes for consumers, taking into account doctrinal, theoretical and empirical analysis.

Appendix 4 contains a table that lists which questions in each survey instrument were prepared for the research and which were prepared for future research. Appendix 4 also includes a copy of the interview questions and each survey instrument.

### 3. Research Design

*A research design is the overarching plan for the collection, measurement and analysis of data.*<sup>10</sup>

A research design needs to describe the purpose of the study and the questions being addressed and make explicit that the research questions are capable of being answered by the research and the research methods that support it.<sup>11</sup> The purpose of this research is the provision of a commentary on the issues in dog breeding and on the ways that regulation can be used to address these issues. This research has a regulatory and stakeholder focus and is directed not

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<sup>10</sup> David E Gray, *Doing Research in the Real World* (Sage, 2014), 128.

<sup>11</sup> Corbin and Strauss, above n , 24 and Rob van Gestel and Hans-Wolfgang Micklitz, 'Why Methods Matter in European Legal Scholarship' (2014) 20(3) (May 2014) *European Law Journal* 292, 301.

only for reading by legal researchers, but also by regulatory theory scholars and those involved in regulating dog breeding.

#### 4. Ethics Approval

Approval from the Human Research Ethics Committee (Tasmania) Network was required for the carrying out of the interviews, the collection of the statistical information from the State and Territory canine associations and the consumer Survey. Approval for Stage 1 was obtained on 14 May 2013, reference number H0013192. A second approval that enabled the surveys of the State and Territory canine associations and the online owner survey was obtained on 17 April 2015.

#### 5. Data Collection

The research project consists of 5 data sets:

1. Transcript data of interviews from representatives of key stakeholder groups (Data Set 1);
2. Data obtained from the Tasmanian canine association library (Data Set 2);
3. Data obtained from the State and Territory canine associations (Data Set 3);
4. Data obtained from a survey of companion dog buyers and owners (Data Set 4); and
5. Data obtained from a survey of dog breeders (Data Set 5).

##### 5.1 Interviews with Stakeholders (Data Set 1)

The case law content analysis that was discussed in Chapter 2, the literature review that formed the basis of the critical analysis in Chapter 3, and insider knowledge possessed by the researcher were all used to identify the key stakeholders in dog breeding in Australia as being:

- The ANKC and State Canine authorities, including members on the Animal Health and Welfare Committees and all breed judges;
- National Breed Councils and Breed Clubs and Societies;
- The RSPCA and other animal welfare groups including the Animal Welfare League and rescue groups;
- The Pet Dog Breeders Association and the Master Dog Breeders Association; and
- The Pet Industry Association of Australia.

Interviews with representatives from key dog breeding stakeholder groups were thought to be essential to determine whether the list of issues addressed in the literature was complete and accurate, and to understand their perceptions on the role and effectiveness of regulation in addressing these issues and on other ways of addressing the current issues.

This thesis assumes that the various stakeholders interviewed were fully able to explain their thoughts and could speak as representatives of their organisations, and that these organisations were themselves representative of those in Australia who have concerns around both unregulated and regulated dog breeding and dog welfare and who have participated in the political process of developing policy in the area.<sup>12</sup>

Interviews were conducted using purposive sampling, following the process of stakeholder investigation and identification. The researcher did not engage in any screening or exclude any groups. In total, 43 stakeholder representatives were contacted by letter or email. Included in this number were two organisations that were suggested by another key stakeholder group. This technique is known as snowballing, where a participant recommends that a researcher contacts another participant. This technique has been used in human animal studies before and is a suitable method to use in this investigation.<sup>13</sup>

When an email was received indicating a willingness to participate in the research, the participant was sent the consent form, the information sheet and the questions. This allowed for uniformity in the questions asked and enabled the interviewees to provide more thoughtful and considered answers.

Interviewing in person with a representative from each key stakeholder group was thought to be the optimal data collection technique as it enabled the key stakeholder groups to provide their views on the issues and expand upon them and identify others. A set of questions were asked,

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<sup>12</sup> Dennis A Gioia, Kevin G. Corley and Aimee L Hamilton, 'Seeking Qualitative Rigor in Inductive Research: Notes on the Gioia Methodology' (2012) 16(1) *Organisational Research Methods* 15, 17 and Amy Morris, *Policies to Promote Socialization and Welfare in Dog Breeding* (Public Policy Thesis, Masters Thesis, Simon Fraser University 2013), 25.

<sup>13</sup> Rachel Orritt, Harriet Gross and Todd Hogue, 'His Bark is Worse than His Bite: Perceptions and Rationalization of Canine Aggressive Behavior' (2015) 3(2) *Human-Animal Bulletin* 1, 2-3.

and respondents were given the opportunity to expand on any of the questions. There was also the opportunity for the interviewer to ask further questions as necessary. The issues in dog breeding are complex and this technique allowed for a depth of probing and flexibility that a phone interview or another method could not achieve.<sup>14</sup>

Having identified the stakeholder groups and emailed the representatives it was felt appropriate to trial the interview data collection stage of this research through a pilot interview. This took place in Tasmania with a conformation dog show judge who was also the President of one of the National Breed Councils. The purpose of the pilot survey interview was to determine the appropriateness of the questions and the time required for the interviews.<sup>15</sup>

The aim was to obtain at least ten interviews.<sup>16</sup> Ultimately, 11 interviews were conducted. Of the 11 interviews, five participants were from industry related groups and 6 from animal welfare groups. A sample set of interview questions is contained in Appendix 4. All but two interviews were conducted face to face and all interviews were recorded by a voice recorder.<sup>17</sup> Eleven interviews were undertaken. The shortest interview took 55 minutes and the longest just over two hours. Interviews took place in Melbourne, Hobart and Brisbane. Most interviews took place at the work place of the participants or at a café or other location suggested by them.

A number of interview techniques were used that allowed the participant to know they could answer the questions in any way that they felt appropriate. These included pauses, using encouraging non-verbal cues and the use of phrases and words such as 'go on' or 'yes' to encourage the respondent to answer the questions in as much depth as they wished. Minimal

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<sup>14</sup> Joseph F Jr Hair et al, *Essentials of Business Research Methods* (M E Sharpe Inc, 2nd ed, 2011), 90.

<sup>15</sup> Gioia, Corley and Hamilton, above n 12, 19.

<sup>16</sup> Sarah Elsie Baker and Rosalind Edwards, 'How Many Qualitative Interviews is Enough? Expert Voices and Early Career Reflections on Sampling and Cases in Qualitative Research' (2012) *National Centre for Research Methods Review Paper*, 10.

<sup>17</sup> Bob Dick, 'Rigour Without Numbers - The Potential of Dialectical Processes as Qualitative Tools' (Paper presented at XVIIIth Annual Meeting of the Social Psychologists, Greenmount Queensland, 1989 page 17 and Michael Healy and Mike Rawlinson, in V J Wass and P E Wells (eds), *Principles and Practice in Business and Management Research* (Dartmouth Publishing Co Ltd 1994), 139.

notes were taken during the process, but the researcher made notes immediately after the interview recording time and date. At the beginning of each interview the interviewer confirmed with the respondent that he or she understood that: the interview would be recorded; they would be given the opportunity to review the transcript of the interview; no confidential information was being sought; and they had the right not to answer any question should they chose not to.<sup>18</sup>

### *5.2 Library and Archival Industry Data (Data Set 2)*

Information currently held in the Tasmanian canine associations' library was accessed to determine whether there was useful information that would assist in answering the first research component which focuses on the major issues facing dog breeding.

Two days were spent at the Tasmanian canine association library. The library stores approximately 700 books on dog showing, dog breeding, dog genetics, specific breeds of dogs, dog training, dog management, and the history of a number of breeds. It also stores a number of industry and association gazettes. The gazettes published by the State and Territory canine associations and the national publication Dog News Australia were reviewed. This review took place by the researcher reading each index searching for the key words that are set out in Section 3 of Part IV of this Chapter. Articles that included any of these key words were photographed. Coding and analysis took place in the manner set forward in Part IV of this Chapter.

### *5.3 State and Territory Canine Association Survey (Data Set 3)*

A survey was designed individually for the eight different State and Territory canine associations. Each survey sent to the canine associations was designed specifically for the State or Territory it was sent to and referred to that State or Territory's specific code in relation to breeding. It sought written answers in relation to:

- Complaints/ enforcement and inspections around breeding and the codes of ethics;

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<sup>18</sup> Healy and Rawlinson, above n 17, 137.

- The existence and roles of committees such as legislative and investigatory panels, including the procedures for recruiting members and the experience and skill set of such members responsible for drafting the regulations;
- The principal objects of the association; and
- The steps taken to ensure compliance by members with the codes of ethics.

A copy of the survey as sent to Dogs NSW is set out in Appendix 4. The intention was to gather information around the establishment, monitoring and enforcement of the breeding codes used by the State and Territory canine associations. It was hoped that the ANKC and the State and Territory canine associations would provide data on their enforcement and compliance. Although only one survey was ultimately returned it did provide useful data that is considered in this research.

#### 5.4 Dog Owner Survey (Data Set 4)

An online survey was designed to collect data in relation to dog acquisition choices, dog health and knowledge about the regulation that exists in Australia around dog ownership. A survey was appropriate as it is a mechanism that allows a larger sample of stakeholders to have a voice. A survey also provides a flexible and affordable data collection method for documenting attitudes and beliefs of dog owners.<sup>19</sup> Dog owners are a substantial stakeholder group that should have a voice in this research, in particular around the way dogs are bred and in relation to what owners want when it comes to acquiring a dog. Surveys have a recognised place in qualitative research, in animal welfare and have been used in Australian research that has examined aspects of dog ownership previously.<sup>20</sup> A copy of the survey questions is contained in Appendix 4.

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<sup>19</sup> James F Anderson, Kelley Reinsmith-Jones and Nancie J Mangels, 'Need for Triangulated Methodologies in Criminal Justice and Criminological Research: Exploring Legal Techniques as an Additional Method' (2011) 24(1) *Criminal Justice Studies* 83, 85 & 88.

<sup>20</sup> Lynden Griggs, 'A Consumer Based Regulatory Pyramid to Improve Animal Welfare' (2009) (3) *Australian Animal Protection Law Journal* 7324, 11 and ER Arnott et al, 'Estimating the Economic Value of Australian Stock Herding Dogs' (2014) 23 *Animal Welfare* 189.



Ideally, the participants would have been representative of the general population of all dog owners in Australia.<sup>21</sup> However given the ethical requirement for voluntary participation and the reality that some dog owners will be more likely to volunteer to complete a survey than others, it is recognised that the sample obtained may not be truly representative. In an effort to ensure that the survey participants are representative of the general Australian population some of the statistics that emerged from the survey data are compared to survey data obtained by the Australian Companion Animal Council in 2010 about pet ownership in Australia. In both the Australian Companion Animal Council survey of 2010 and the survey of dog owners undertaken as part of this research 91% of owners indicate that to them, their dog is a member of the family.<sup>22</sup> This provides some indication that the data obtained in this research is a representative sample.

There were two stages to the generation of questions for the survey questionnaire. The first stage was the comprehensive literature review that provided the basis for the questions around dog acquisition and dog health. The literature review, case law analysis and an initial analysis of the interview data provided the basis for the questions around the issues in dog breeding.

Before the survey was activated it was tested a number of times by sending it to a number of colleagues and other academics. Two dog owners were asked to complete it and provide feedback to ensure the questions were clear and easy to answer.<sup>23</sup>

The survey was open for eight weeks and was promoted in a number of ways. Five hundred post cards were printed for distribution and two web links created for distribution on social media Facebook groups. A copy of the post cards is set out in Appendix 5. The post cards were

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<sup>21</sup> Vanessa Ilse Rohlf, *Beliefs Underlying Dog Owner's Management Practices* (Doctor of Philosophy Thesis, PhD Thesis, Monash University 2013), 64.

<sup>22</sup> 91% in both the Australian Companion Animal Council 2010 survey and the dog owner survey conducted as part of this research. Australian Companion Animal Council, 'Contribution of the Pet Care Industry to the Australian Economy - 7th Edition' (Animal Health Alliance 2010).

<sup>23</sup> Fritz Scheuren, 'What is a Survey' (2004) <<http://trove.nla.gov.au/work/20054592?q&versionId=23620207>>, 31.

distributed at a number of dog events, such as at dog walking meetings, the Million Paws Walk.<sup>24</sup> These cards were also posted to a number of veterinary practices and dog grooming businesses randomly chosen in four States. The link to the survey was posted on not less than 20 Facebook group pages.

The sample ultimately consisted of 2841 dog owners who filled out a self-administered online survey.<sup>25</sup> The data obtained was transferred from Survey Monkey into excel spreadsheets and analysed in the ways that are set out in Part IV of this Chapter.

### *5.5 Dog Breeder Survey (Data Set 5)*

A similar approach was implemented with the development of the breeder survey. An online survey was developed to collect data around such things as: breeding practices; breeders' perceptions around their responsibility for the dogs they produce; the health testing they do; what they provide to purchasers; and the perceptions of the type of breeding establishment they operate. This survey contained 43 questions, eight of which were prepared to collect data for this research. A copy of the survey questions is set out in Appendix 4.

Ideally, the participants would have been representative of all dog breeders in Australia.<sup>26</sup> Links to the survey were distributed as widely as possible, including emails to the State and Territory canine associations, veterinary schools at a number of Australian Universities and social media dog breeding and dog health forums and groups. The sample ultimately consisted of 275 dog breeders who filled out a self-administered online survey. The survey did not ask breeders to self-select what type of breeder they believed they were. They were asked to disclose how many litters that they breed in 2014. Appendix 15 sets out the data obtained in relation to number of litters bred. This discloses that the majority of breeders that undertook the breeder survey bred less than 5 litters in the year disclosed, confirming that most would be classed as hobby or

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<sup>24</sup> The Million Paws Walk is an annual fundraising even undertaken by the RSPCA across Australia. <http://www.eventlist.com.au/event/rspca-million-paws-walk-hobart/>.

<sup>25</sup> Michael J Dotson and Eva M Hyatt, 'Understanding Dog–Human Companionship' (2008) 61(5) *Journal of Business Research* 457 page 460.

<sup>26</sup> Rohlf, above n 21, 64.

recreational breeders. The survey was open for a 16-week period. The data obtained was transferred from Survey Monkey into excel spreadsheets and analysed as set out in Part IV of this Chapter.

### PART III. DATA SELECTION

A significant amount of data has been collected from across the five data sets. Not all data that was collected has been used to inform this research. Both the dog owner and dog breeder surveys were prepared to provide information for this research and for research to be undertaken in the future. Appendix 4 contains a table that outlines which questions in each survey instrument were prepared for and used in this research.

### PART IV. CODING AND ANALYSIS

#### 1. Introduction

Data sets 1, 2 and 3 are qualitative in nature, so coding and content analysis has been used to draw out themes. Data sets 4 and 5 have both quantitative and qualitative components so both content analysis and quantitative research methods have been used to investigate this data.

#### 2. Coding / Collection

Having collected data from interviews, 3 surveys and from an examination of archival material it was necessary to adopt an approach that allows for a systematic presentation of this material. A decision was made to use codes and processes to enable the data to be placed into themes. This approach has been used for a number of years in social science and environmental research.<sup>27</sup>

##### 2.1 Interview with Stakeholders (Data Set 1)

The 11 interviews with stakeholders were transcribed by the researcher and coded using NVivo. NVivo is computer software that helps to organise and analyse data that is particularly useful in

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<sup>27</sup> Corbin and Strauss, above n 11 and Gioia, Corley and Hamilton, above n 12, 18 and Scott Sonenshein, Katherine A DeCelles and Jane E Dutton, 'Its Not Easy Being Green: The Role of Self-Evaluations in Explaining Support of Environmental Issues ' (2014) 57(1) *Academy of Management Journal* 7, 12.

coding and analysis of qualitative data.<sup>28</sup> Coding is the process of transforming data into a more standardized format so that it may be analysed in a consistent way through identifying recurring words, concepts or themes.<sup>29</sup>

As the interviews followed a semi structured format, the coding commenced with the creation of nodes around: introductory questions; issues facing dog breeding in Australia; thoughts around the current regulatory framework; major role of the stakeholder organisation in relation to dog breeding; the future of dog breeding; animal welfare; role of animal welfare groups; role of industry groups; role of breeding groups; role of media and advocacy and; questions around puppy buyers.

Each interview consisted of between 30 and 45 questions, so nodes were created for each of these questions. Under each of these nodes a sub-node was developed. For example, under the node – Issues Facing Dog Breeding in Australia, 2 further sub nodes were created:

- What do you believe are the major issues facing dog breeding?
- What are your opinions on how these issues might be best addressed?

As is set out below more sub-nodes were developed as key words as the analysis continued.

Appendix 14 contains a screen capture of a set of nodes created for Data set 1, showing the 35 key words that were developed in accordance with the processes that are described in Section 3 of the Part.

## *2.2 Library and Archival Industry Data (Data Set 2)*

This data set was obtained by taking photos of material held at the Tasmanian canine association's library. Gazettes published by all the State and Territory canine associations for the

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<sup>28</sup> QSR International Pty Ltd, *What is NVivo?* (2016) <<http://www.qsrinternational.com/what-is-nvivo>>.

<sup>29</sup> Gray, above n , 690 and L B Lempert, 'Asking Questions of the Data: Memo Writing in the Grounded Theory Tradition' in *The SAGE Handbook of Grounded Theory* (Thousand Oaks 2007) 245, 251.

period 2013 to March 2015, National Dog Magazine for the period 1978 to 2001<sup>30</sup> and the national publication Dog News Australia Dog, the paper representing the hobby of pure breed dog breeding for the period 2007 to 2016.<sup>31</sup> More detail around how this data was collected is set out in Chapter 6.

### *2.3 State and Territory Canine Association Survey (Data Set 3)*

As only one of the State or Territory canine associations participated by returning the survey there was no need to code this material. The answers were brief and therefore they could be analysed without the need for them to be coded.

### *2.4 Dog Owner Survey (Data Set 4)*

The owner survey consisted of 31 questions of which 17 provided participants with the opportunity to expand their answers with an 'other' or 'if you would like to expand or add more, please do so here'. Having collected 2841 responses to the survey and having a clear understanding of the research components that were to be addressed, nodes were created in NVivo for those questions that allowed participants to provide expanded answers. As is set out below more sub-nodes were developed as key words were developed.

Manual coding was used to consider the written answers provided in the survey in response to questions 13, 14, 15, 25 & 26. The decision to use manual coding instead of NVivo was made as the researcher had become more familiar with the key words so manual coding became more expedient.

### *2.5 Dog Breeder Survey (Data Set 5)*

The breeder survey consisted of 43 questions of which ten provided participants with the opportunity to expand their answers. Answers to seven of the questions were coded using NVivo

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<sup>30</sup> It is noted that this set was not complete. The decision was made to include this publication to provide historical content.

<sup>31</sup> Top Dog Media Pty Ltd, *Welcome to Dog News Australia - Australia's No. 1 Show Dog Publication* (2016) <<http://www.dognewsaustralia.com.au/>>. After reading through the Dog News Australia Magazine whilst undertaking the data collection searches a decision was made to subscribe to this magazine to ensure this research recorded articles for this magazine until submission date.

and 2 were coded manually using the same process as adopted to code the data obtained in the dog owner survey. The last two questions were coded manually as the researcher became more familiar with the key words. As with data sets 1 and 4 more sub-nodes were developed as key words were developed.

### 3. Data Content Analysis and Development of Key Words

All coded material was analysed using content analysis. Content analysis is a technique that enables information or context in written or photographic form to be analysed according to themes or key words.<sup>32</sup> Such technique allows a researcher to use '2<sup>nd</sup> order analysis' (that is using researcher-centric concepts, themes and dimensions to discover attributes in the content of large amounts of data) that is used in this research to answer the research questions.<sup>33</sup>

#### 3.1 Interviews with Stakeholders (Data Set 1)

The data analysis followed a systematic process that was iterative in nature.<sup>34</sup> To enable the identification of themes that portion of the interview transcripts that had been imported into the NVivo software were searched for key words and phrases in light of:

- Table 2 that is set out in Part V of Chapter 3. This table provides the links between the research components and the regulatory issues as first considered when undertaking the literature review and case law analysis; and
- Words that began to emerge as being in common in the interviews.

From Table 2, 15 words emerged as being key words for examination. These words are:

Accountability	Code	Consumer
Effectiveness	Enforcement	Genetic
Health	Monitor	Motivate
Protect	Regulation	Role
Stakeholder	Standard	Welfare

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<sup>32</sup> Neuman, above n 2, 36.

<sup>33</sup> Gioia, Corley and Hamilton, above n 12, 18 and 25.

<sup>34</sup> Sonenshein, DeCelles and Dutton, above n 27, 12.

Fifteen sub nodes were created in NVivo, one for each of these words. Each interview transcript was examined using the ‘find’ function in NVivo to find each time any of these words was mentioned. The full comment around each word was then cut and pasted into the appropriate sub-node. Having done this the comments within the 15 sub nodes were read again. Another set of 20 additional key words emerged. These were words that appeared within the answers of participants as recorded in any one the 15 sub-nodes. These extra key words are:

Advertising	Backyard	Breed/Breeding
Council	Desex	Factory
Fad	Information	Intensive
Hereditary	Licence/Licensing	Locate
Practice	Political	Problem
Sale	Sell	Sold
Transparent	Transparency	

Sub nodes were set up for these 20 words. Again, the interview transcripts were searched for each of these words. Appendix 14 contains a screen capture of the NVivo software program with the 35 key words set out in nodes. From the comments that were made in response to these 35 key words, themes emerged around the issues in dog breeding. These are considered in Chapter 6. Chapter 6 also contains Figure 3 which provides a diagram setting out the process followed from key word identification to theme and issue development.

Having coded the interview data, the nodes and the information contained in them were used in a number of ways to provide information to address the research components set out in Chapters 6 to 9. More detail in relation to how the interview data in data set 1 was coded and analysed to answer each research component is set out in the research Chapters that follow.

### ***3.2 Dog Owner Survey (Data Set 4)***

The key words as set out above were also used to review comments made by dog owners when analysing comments made by them in response to Question 20 in the dog owner survey. This question asked owners to consider if the ANKC or the State and Territory canine associations should be doing more in relation to dog breeding. This data is considered in Part III of Chapter 8.

Another set of key words was utilised to review the comments collected in response to question 25 in the dog owner survey. This question asked participants about their awareness of their rights and obligations as dog owners. The quantitative data provided in response to question 24 was used as a basis to stratify the comments made in response to question 25.<sup>35</sup>

So that the 1252 comments made in response to question 25 in the dog owner survey could be analysed in a meaningful way they were coded as relating to either: dog ownership; dog management; or dog welfare. The key words are set out under each of these 4 classifications of dog regulation as used in Chapter 2. The key words are:

#### **Dog Ownership:**

Consumer	Contract	Owner*	Property* <sup>36</sup>
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#### **Dog Management:**

Control	Council	Danger	Licence
Manage	Microchip	Register	Specific

#### **Dog Welfare:**

Care	Food	Health	Shelter
Veterinary	Water	Welfare	

#### **Dog Breeding and Selling (Including ANKC pursuits):**

ANKC	Association	Breeder/Breeding	Canine
Purchase	Sale		

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<sup>35</sup> How this was done is explained in more detail in Section 2 of Part II in Chapter 8.

<sup>36</sup> Both the words 'owner' and 'property' have been placed under dog ownership regulation. As each comment was read it became apparent that the words were used in the context of owner's obligations to be responsible for the management and control of their dogs and to keep their dog contained effectively on their property. No comments were found in the context of contractual disputes or in relation to how the law considers a dog to be the property of its owner.



## PART V. METHODS FOR EVALUATION

### 1. Introduction

The evaluation of qualitative research is a crucial component of all social science research. Questioning the relevance of traditional concepts of validity and reliability raise issues of the legitimacy of qualitative research. The authority to claim that research is legitimate is based on it being an accurate, true and complete account of an experience, recognising that the text is based on the construction by the researcher.<sup>37</sup> Mason asserts that the broad concepts of validity and reliability can be usefully applied in the evaluation of qualitative research. Dasgupta, however, uses the criteria of robustness, the use of research methods that provide accurate data that allows a focus on processes.<sup>38</sup>

This research uses tests of validity, robustness and reliability to ensure that a rigorous and systematic approach is adopted. The evaluation of the methods that are explained below is set out in Part II of Chapter 11.

### 2. Validity and Reliability of Research Methods

#### *Test of Internal Validity*

For research to be valid it must measure what is intended to be measured, and the data derived from the different methods must draw out comparable data, confirming that irrespective of methods the data indicates the same themes and patterns.<sup>39</sup>

#### *Test of Robustness*

Robust studies are those resulting from research that employs a number of methods of data collection.<sup>40</sup> This research used triangulation, which is the collection of various types of data to consider the same issue. The different kinds of data from different sources corroborate each

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<sup>37</sup> Jennifer Mason, *Qualitative Researching* (Sage Publications Ltd 2002), 38.

<sup>38</sup> Meeta Dasgupta, 'Exploring the Relevance of Case Study Research' (2015) 19(2) *Vision* 147, 151.

<sup>39</sup> Todd D Jick, 'Mixing Qualitative and Quantitative Methods: Triangulation in Action' (1979) 24(4) *Administration Science Quarterly* 602 602.

<sup>40</sup> Anderson, Reinsmith-Jones and Mangels, above n 19, 84.

other as both a means for checking validity and a way of capturing a more contextual portrayal of an industry or unit being studied.<sup>41</sup> In this examination of dog breeding, triangulation, through the use of a case law analysis, interviews of key stakeholder groups and surveys, will provide a more contextual portrayal of dog breeding.

#### *Intra-coding Reliability*

This process of establishing rules for conducting coding undertaken by a single researcher can be referred to as intra-coding reliability. It requires the adoption of processes that ensure that any coding that takes place over time is consistent, careful and accurate.<sup>42</sup>

## **PART VI. CONCLUSION**

This Chapter has set out both the methodical approach and methods adopted to undertake the empirical components in this research.

The following 4 chapters (Chapters 6-9) contain a consideration of the key results and findings that are used to answer each of the four components of the research question. Each of these Chapters contains a discussion section and summary section that sets out the major findings. Chapter 10 considers how the current regulatory framework might become more responsive and sets out a framework for change that considers the future role of regulation.

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<sup>41</sup> Jick, above n 39, 603 and Corbin and Strauss, above n 27 and Gregory Shaffer and Tom Ginsburg, 'The Empirical Turn in International Legal Scholarship' (2012) 106(1) *The American Journal of International Law*, 4.

<sup>42</sup> Jennifer Mason, *Qualitative Researching* (Sage Publications Ltd 2014), 39 and 187 -188.

## CHAPTER 6: WHAT DO STAKEHOLDERS PERCEIVE AS MAJOR ISSUES?

### PART I. INTRODUCTION

A key to effective responsive regulation is an examination of how regulation is:

*Experienced in everyday life by those to whom it is directed as regulatees or beneficiaries.*<sup>1</sup>

This Chapter addresses the first component of the research question:

1. *What are the major issues facing dog breeding in Australia, as perceived by key stakeholders, and how do those stakeholders believe these issues can be addressed?*

The case law analysis that took place in Chapter 2 and the issue identification and critique of the deficiencies that exist with the current regulatory framework that took place in Chapter 3 identified a number of issues. It is the role of this Chapter to determine if the issues identified in the critical analysis conducted in Chapter 3, align with the results obtained in this research.

This Chapter outlines the issues as findings derived from the 5 data sets and discusses the findings on the issues in dog breeding. Part II of this Chapter sets out those findings. Part III sets out the findings around the possible ways that the stakeholders believe that the issues might be addressed. Part IV discusses the findings and Part V provides a Chapter summary.

### PART II. MAJOR ISSUES IN DOG BREEDING

The findings that are discussed in this Chapter have been identified through a consideration of the data derived from 4 of the data sets. This Chapter adopts the empirical methods that have been outlined in Chapter 5.

#### 1. Interviews with Stakeholders (Data Set 1)

All 11 interview participants were asked the question:

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<sup>1</sup> Garry C Gray and Susan C Silbey, in Christine Parker and Vibeke Lehmann Nielsen (eds), *Explaining Compliance: Business Responses to Regulation* (Edward Elgar, 2011) , 134 N Gunningham, "Environmental Law, Regulation and Governance: Shifting Architectures", (2009) 21(2) *Journal of Environmental Law* 179, 200 and Christine Parker, 'Twenty Years of Responsive Regulation: An Appreciation and Appraisal' (2013) 7 *Regulation and Governance* 1, 9.

*What do you believe are the major issues facing dog breeding in Australia?*

As set out in Part IV of Chapter 5, 35 key words were generated from analysing Data Set 1. These key words are listed again here.

Key Words		
Accountability	Code	Consumer
Effectiveness	Enforcement	Genetic
Health	Monitor	Motivate
Protect	Regulation	Role
Stakeholder	Standard	Welfare
Advertising	Backyard	Breed/Breeding
Council	Desex	Factory
Fad	Information	Intensive
Hereditary	Licence/Licensing	Locate
Practice	Political	Problem
Sale	Sell	Sold
Transparent	Transparency	

These 35 key words were used in the generation of the ten issues that emerged from the analysis of the data. Each interview transcript was searched using the 'control find' function for each of these words. Figure 3 provides a diagram setting out the process followed from key word identification to theme and issue development. This same process was used for each key word across all interview transcripts. This process identified the issues that are set out in Table 3 below. These ten issues and the key words that were used to generate them are used to code and analyse the other data sets collected in this research. The numbering that is used in Table 3 is adopted in the rest of this Part of the Chapter.

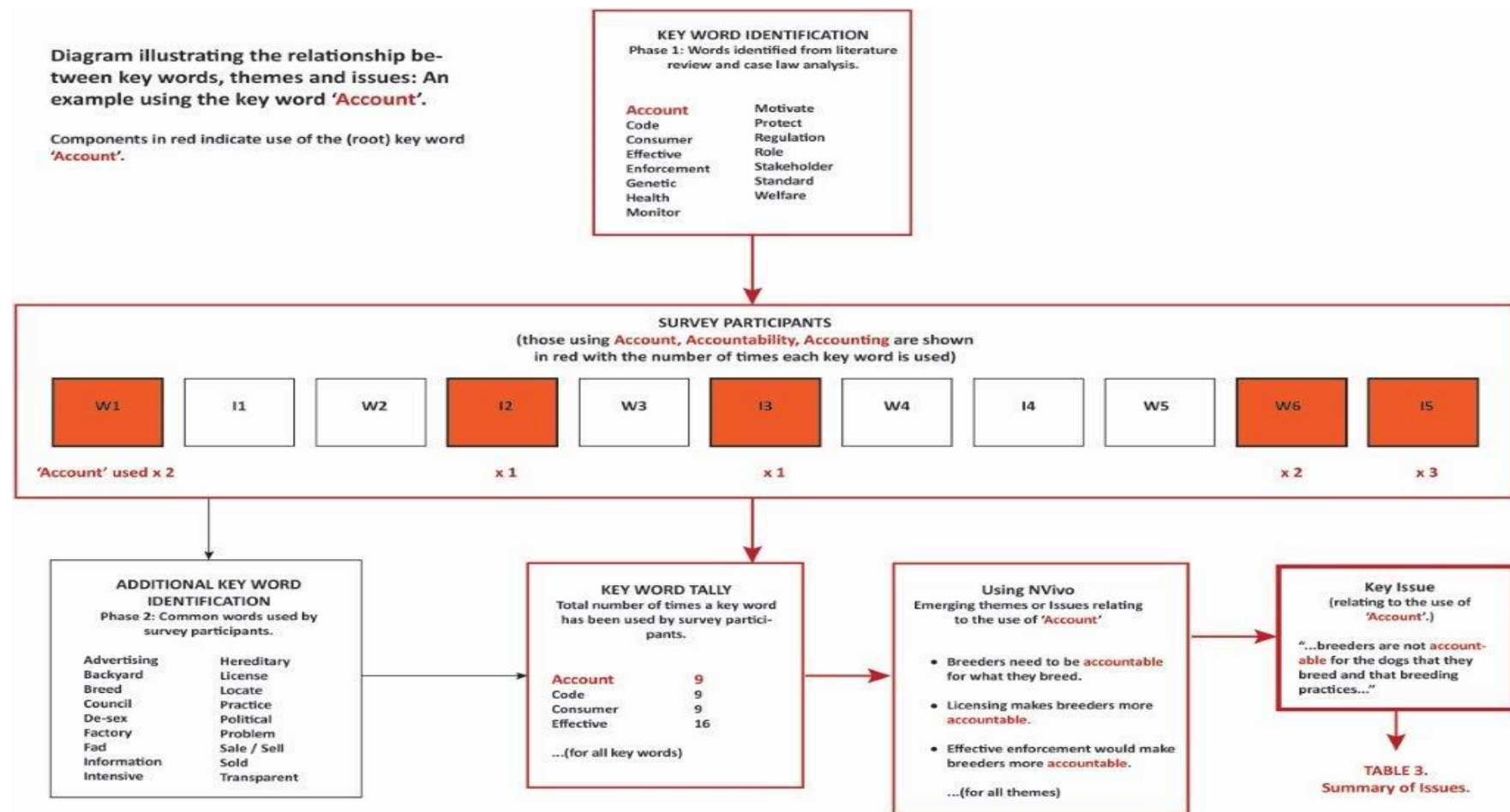


Figure 3 - Diagram illustrating the Relationship between Key Words, themes and Issues

Table 3 - Summary of Issues Identified by Interview Participants

No	Key words	Issue identified	No. of participants that mentioned key word & interview participant code	Sample quotes
1	<b>Accountability Transparency</b>	A belief that breeders are not accountable for the dogs that they breed and that breeding practices should be more transparent	5 W1, W6, I2, I3, I5	<i>Irresponsible breeding practices/ Intensive commercial breeding operations with a lack of <b>accountability</b>. (W1)</i>
2	<b>Welfare</b>	A belief that animal welfare as an agenda is often politically motivated	2 W3 & I5	<i>They all have their own agendas, and unfortunately sometimes decisions are made politically rather than based on the facts and on the best animal welfare outcomes and when politics comes into it animal <b>welfare</b> can suffer (I5)</i>
3	<b>Breeding Motivate Factory/ Farm Backyard</b>	A belief that a proportion of breeders breed irresponsibly without regard to health or welfare of breeding stock or puppies, motivated by money not in the best interests of dogs or the breed and that no effective action is being taken by regulators to stop such practices. This includes the use of breeding practices that are seen as puppy farms and backyard breeding that does not focus on good canine health	5 W1, W2, W5, I2, I3	<i>We actively lobby against puppy <b>farming</b> and <b>backyard breeding</b> is probably the most common term for it. Me personally I rescue dogs. I have a rescue group called Second Chance Pet Rescue, we currently have three dogs and two cats. (W2)</i>
4	<b>Desex</b>	A belief that people are not required to de-sex their dogs enables irresponsible breeding practices	2 W2 & I2	<i>Backyard breeders and the lack of <b>desexing</b> and certain people thinking you know we can sell these puppies for \$1000 and make a bit of money on the side. I think that that is causing a lot of problems. I think the sale of puppies in pets shops will go. I think the consumer will shut that down I think the pet shop industry is struggling at the moment it is under intense scrutiny, lots of questioning, more and more we are seeing this trend of pet shops saying we are just not going to sell puppies, we are going to work with rescue. (W2)</i>

5	<b>Fad Breeding</b>	A belief that some breed because of a 'fad', a desire by puppy buyers for a type of dog or a look, without regard to puppy soundness	1 I2	<i>Biggest issue – <b>fads</b> in breeding. In that we have people that are opportunistic, so they make, years ago blue (x breed) were very rare. The discerning breeder will mate the best bitch to the best dog to get the best puppies, then a blue one pops out. Oh, it might not be the best quality, and someone buys it. Someone will say oh well let's mate two blue ones together because they are a rare blue and now it's started in French Bulldogs and that sort of stuff.</i>
6	<b>Genetic Hereditary</b>	A belief that many breeders do not do enough genetic testing and that they do not make careful enough breeding choices and that this impacts on the health of puppies that are being sold.	1 I3	<i>Dog breeding is a hobby, it's not an industry and nor should it be, it shouldn't be, i.e. we have advertisements on the TV for a lady selling Labradoodles, they are not health tested, no <b>genetic</b> testing done as far as I know um and if one goes to the Dogs Home, I am told by a person that works there that the majority of dogs there are Labradoodles with problems, temperament problems and um HD which is a common term for sub luxation of the femur.</i>
7	<b>Information</b>	Lack of reliable data around breeding practices, and a belief that breeders do not pass on to buyers all information about the puppies they sell to buyers. Confusion amongst buyers about who is a registered breeder and what they can provide. Concerns that many breeders do not actually understand their obligations under the codes	4 W1, W6, I3, I5	<i>There is a need to properly identify the problem and gather reliable statistics and report on health and welfare of intensively farmed puppies (inherited conditions and breeding conditions) from vets, breeders, trainers, behaviourists, pet owners, AWL shelters, academics, stakeholders, gather reliable national euthanasia statistics, gather <b>information</b> on breeding of pedigree dogs, issues on the effectiveness of codes of ethics on breeding, inherited conditions, we need to agree on a definition on what is good breeding practice – anything else you want to expand on that? (W1)</i>

8	<b>Sale/Sell/Sold</b>	A belief that the ability to buy dogs over the internet or in a pet shop allows poor breeding and encourages lack of accountability	4 W2, W4, W6, I2	<i>I think that the next big problem facing us is the online <b>sales</b>, you know where puppy farms can build these beautiful webpages with dogs running in the grass, you know family raised, raised with our children, you know, and it's just not true. So, I think that is the next big thing. (W2)</i>
9	<b>Problem</b>	A belief that there is too much breeding leading to dog overpopulation	2 W3 & W5	<i>Overpopulation is the biggest <b>problem</b> facing dogs, euthanasia would have to be the top problem. I am sorry many dogs get euthanised, through no fault of their own, no fault with their behaviour or not through illness or disease or whatever, they could be perfectly fine dogs, but the pound is full that is the biggest problem, part of the overpopulation. (W3)</i>
10	<b>Stakeholder</b>	A shared mistrust of other stakeholders, and belief that each specific group is the best equipped to know what is best for dogs and in dog breeding	6 W1, W4, I2, I3, I4, I5	<i><b>Stakeholders</b>, many are entrenched too. There is so much with pure breed dog breeding that holds the monopoly, which creates an atmosphere which is not necessarily in the best interests of dogs.</i>



Table 3 provides a summary of the issues identified by interview participants. Sample quotes from the interviews have been included and demonstrate the key word that was identified.

## 2. Library and Archival Industry Data (Data Set 2)

Further data was collected by exploring the library and archival data set. The intent in collecting the data was to consider historically what the ANKC and the State and Canine Associations identified as the major issues in dog breeding. This was done in light of the themes/issues that emerged from the interviews.

The 35 identified key words that were identified and that are set out in Part IV of Chapter 5 were skimmed for, and if one of them appeared a photo was taken of the article. In total 464 photos were taken. All articles were then read in light of the key words. Those issues that have been identified are listed in the Table 4 below. The numbering is the same as used in Table 3, so that communality of issues can be noted and recorded in Section 5 of this Part of the Chapter.

*Table 4 - Summary of Issues Identified in Library and Archival Industry Data*

Issue from Table 3	Issue identified	Where in the data this issue was identified and article summary
5	<b>Fads in Breeding</b> A belief that some breeders will breed because of a 'fad', a desire by puppy buyers for a type of dog or look, without due regard to puppy soundness	Fads in breeding was recognised as an issue in Dog News in 2007. This article states that eight years on from the designer crossbreed boom that started in the 1990s designer dogs were presenting with health and maintenance problems as their legacy. <sup>1</sup> Again later in 2007 there is an article in Dog News Australia that states that the rise of designer dog breeds and such fads in breeding caused an increase in the regulation of dog breeding. <sup>2</sup>
6	<b>Genetic testing and Breeding Selections</b> A belief that some breeders do not do enough genetic testing and that they do not make careful enough breeding choices and that this impacts on the health of puppies that are being sold.	This was identified in an article in Dog News in May 2015, which noted there is awareness amongst some breeders of the need to consider veterinarian evidence and suggestions aimed at ensuring sustainable breeding practices to save a number of breeds currently impacted by high incidence of genetically related breed disorders. <sup>3</sup>

<sup>1</sup> (Footnote 1A) Celeste Bryson, 'Groomers Warn of Designer Disasters ', *Dog News Australia* (Hoxton Park ), May 2007.

<sup>2</sup> Celeste Bryson, 'Thousands in Vet Bills for Designer Crosses ', *Dog News Australia* (Hoxton Park ), December 2007.

<sup>3</sup> 'Outcrossing Could be Key to Better Breed Health', *Dog News Australia* (Hoxton Park ), May 2015.

7	<b>Information Asymmetry</b>	Identified in an article written in 2009 confirming that buyers of some cross breeds do so because they do not hold all information that they need to make fully informed decisions and believe that mixed breeds are healthier, when in fact this is not based on scientific evidence but on a push by sellers of some designer dogs to effectively market their dogs, something that pure breed dog breeders do not. <sup>4</sup>
9	<b>Overpopulation</b> A belief that there is too much breeding leading to dog overpopulation	<p>This was first identified in 1978 in the National Dog Magazine in an article confirming a strong belief amongst breeders that given most breed clubs had rescue arms, pedigree dogs were not adding to the overpopulation or stray dog issue.<sup>5</sup> Again, in both 1989 and 2000 it was raised in an industry publication that even though dogs remain a popular companion, more demands were being made on animal welfare and rescue organisations as more dogs were being dumped at pounds, in the bush or surrendered for re-homing.<sup>6</sup></p> <p>In 2015 the State and Territory canine associations and the ANKC started to regularly print an article providing figures that estimated the number of puppies produced in Australia and how many of these were produced by ANKC registered breeders. Using the accurate statistics kept by the ANKC and estimates provided by other stakeholders in dog breeding, this shows that only 17% of puppies each year come from registered breeders. The ANKC and the State and Canine Associations argue that this demonstrates that overpopulation is not caused by the breeding of registered dogs.<sup>7</sup></p>
10	<b>Stakeholder differences</b> A shared mistrust of other stakeholders and belief that each specific group is the best equipped to know what is best for dogs and in dog breeding	An article in Dog News in 2015 noted that for breeders, the reality today is that they are less able to keep as many breeding dogs. This article laments that they are losing diversity in their breeding stock because of the ability to keep fewer dogs. There is recognition that other stakeholders view this as a good thing. <sup>8</sup>

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<sup>4</sup> Celeste Bryson, 'Industry Experts say Statistics will prove Pedigrees are Healthier ', *Dog News Australia* (Hoxton Park ), 2009; *ibid*; *ibid*.

<sup>5</sup> Frances Sefton, 'Change & Growth For Dogdom Continue in 1978', *National Dog* (Menangle Park), 1978, 111.

<sup>6</sup> Frances Sefton, 'What of the next 200 years of Dogs in Australia?' (National Dog 1989); Frances Sefton, 'What of the Next 200 Years of Dogs in Australia?', *National Dog* (Menangle Park), 1989, 2 and Celeste Bryson, 'Pedigrees Have More Chance ', *Dog News Australia* (Hoxton Park ), 2000.

<sup>7</sup> Australian National Kennel Council Limited, 'A Forensic View of Puppy Breeding in Australia 2017' (2017) <<http://ankc.org.au/media/6598/a-forensic-view-of-puppy-breeding-in-australiav4.pdf>>.

<sup>8</sup> Andrew H Brace, 'Brace Yourself - We Should be Grateful for the Great Breeders of the Past ', *Dog News Australia* (Hoxton Park ), Issue 1 2015.

As can be seen in Table 4, 5 of the 10 issues that were identified by the analysis of the interview data have been identified by this data. These issues are summarised in section 5 of this Chapter and discussed in Part IV.

### 3. Dog Owner Survey (Data Set 4)

The dog survey was designed after all but one of the interviews had been undertaken and after the library and archival industry data had been collected. The survey was designed to gain an understanding of the issues as perceived by dog owners.

A number of questions were designed to consider owner's understandings and experiences of dog health. This was essential given that much of the literature considered in the critical analysis that took place in Chapter 3 relates to dog health, and that canine welfare and dog health was identified as a major issue in dog breeding. Three questions were generated in the dog owner survey specifically to expand on the issue of dog health and the awareness that owners have on causes of canine health and welfare issues. These 3 questions are listed in Appendix 6, as is the basic data obtained for each question.

Dog owners were asked in question 13:

- *Has your dog had any medical or other health or temperament conditions over its time with you other than standard vaccination and check-up visits to your Veterinarian?*

Fifty five percent of the 2783 participants that answered this question indicated that their dog had not suffered from such a condition. Forty five percent (1259) indicated however that their current dog had a medical issue that was over and above standard vaccination and check-up visits to the veterinarian. This suggests that owners do have good knowledge around the extent of medical issues that their dogs can suffer from.

To consider this self-reporting more fully, those owners that answered 'yes' to question 13 were asked questions 14 and 15. These asked owners:

- *Are you aware of what caused the latest of the medical issues experienced by your dog?*

- *Do you believe that any of the health or medical issues your dog has suffered may be a result of his or her breeding, or be specific to dogs of his or her type?*

Twelve hundred and forty-eight of those that answered question 13 in the affirmative answered question 14. Seventy three percent indicated that they were aware of what caused the medical issue and 27% indicated that they did not.

Twelve hundred and fifty-three of those that answered question 15 in the affirmative answered question 15. Of these, 36% (461) indicated that it was their belief the health issues that their dog suffered from may be due to its breeding or be breed specific. Participants that answered question 15 were invited to leave a written comment to expand on their answer. Four hundred and thirty-two participants (432) left written comments. To consider these written comments, a number of the key words as set out in Part IV of Chapter 5 were used. Eight words were selected from the 35 being words deemed to be relevant to dog health, breeding or welfare. The words:

Backyard	Breed	Farm
Health	Genetic	Hereditary
Practice	Welfare	

A decision was made to manually code and consider the 432 responses by reviewing all comments made in response to question 15. The decision to code manually was made as the creation of nodes in NVivo, to enable a 'control find' search to take place as is set out in Figure 3 would have added length to the process. To enable this manual coding all 432 comments were exported directly from Survey Monkey into a spreadsheet. The 8 key words identified above were used to arrange the answers into categories. Question 16 also asked participants to list type of breed. This data was also included in the spreadsheet.

Of the 432 comments, 89 referred at least once to one of the key words. A sample of the comments and which key word was mentioned is set out in the table at Appendix 7. This table provides a snapshot of comments made in the owner survey in response to question 15. Where breed of dog is identifiable this is recorded in the table. It became apparent that a large proportion of owners were aware of the type of medical issues that might affect their dog given its breed type. The most common word that appeared was 'genetic' with 41 of the 89

comments mentioning some suspected genetic link to the reported medical condition. Of the 7 other key words there were a further 48 comments. Ten comments refer to 'hereditary'. As some of the other comments mentioned more than one key word, a decision was made in the table to set out those that referred to one or more of "backyard", breeding" or "practice" in one area. This group obtained 16 comments. There were a further 22 comments that mention one or more of the key words: "health"; "farm" or "welfare".

Turning to the comments made in relation to genetic issues, there were several comments made around certain breeds being predisposed to anxiety, breathing issues and leg issues.

*I believe German Shorthaired Pointers are prone to separation anxiety and she wasn't brought up appropriately with the breeder in her first 8 months before we got her. They are pure breed pugs and I know it is more common for many pure breeds (as opposed to cross's and mongrels) to experience health issues due to genetic faults, inbreeding etc.*

Having considered the comments made in response to question 15 a decision was made to further expand the analysis by extracting comments that were made in response to question 21, which asked if dog owners believe there should be commercial dog breeding in Australia.

This question generated 1200 open ended comments. This question was intended to provide data for use in considering research component 4, around the role of regulation in relation to the supply and demand for dogs, namely the findings that are set out in Chapter 9. Reviewing them made it clear that many of the comments actually relate to medical issues and issues that owners have with how their dogs were bred. All comments were searched for the key word 'breed'. Of the 1200, 256 comments referred to 'breed'. These 256 comments were searched again looking for the other 34 key words within them. The results are recorded at Appendix 8. As the search was being undertaken the word 'farm' appeared regularly so a decision was made to record how many times this word appeared. As can be seen in Appendix 8, several key words appeared over 30 times, as set out below.

Question 21 in Dog Owner Survey – Search of the 256 Comments that contained the word 'breed' and the key word as listed and number of times each other key word appeared			
Health	35	Genetic	35
Licence/Licensing	38	Welfare	47
Farm	72	Sale/Sell/Sold	57

Having undertaken this analysis of comments made by dog owners in response to questions 15 and 21 the table below provides a summary of the issues identified in the dog survey data. The 3 issues that were identified from this analysis that were also identified from the stakeholder interviews are:

*Table 5 - Summary of Issues Identified by Dog Owners*

Issue number from Table 3	Summary of Issues Identified in Dog Survey Comments from Questions 13 and 15
3	The use of breeding practices that do not take into regard the <b>health</b> or welfare of breeding stock or puppies. The use of breeding practices that are seen as puppy <b>farms</b> and breeding that does not focus on good canine health and <b>welfare</b>
6	A belief that many breeders do not do enough <b>genetic</b> testing and that they do not make careful enough breeding choices and that this impacts on the health of puppies that are being sold.
8	<b>Selling</b> practices such as selling puppies over the internet and in pet shops that do not promote dog welfare and health and that do not create accountability in breeders for the health and welfare of the puppies that they produce

As can be seen in Table 5 above, 3 of the 10 issues that were identified by the analysis of the interview data have been identified by this data. These issues are discussed in Part IV of this Chapter.

#### 4. Dog Breeder Survey (Data Set 5)

Two hundred and seventy-five breeders completed the online survey. Question 38 in the dog owner survey asked breeders if they believe that the current regulation of dog breeding in Australia is effective. This was a 'Yes' or 'No' question, but participants were invited to expand on their answers if they wished to do so. This question was asked primarily to generate data to consider the 3<sup>rd</sup> research component that considers the stakeholders' views on the effectiveness of the current regulatory environment and which is considered in Chapter 8. These comments provided data that is useful to investigate the research component being considered in this Chapter, namely a consideration of the major issues in dog breeding. One hundred and seventeen breeders provided a comment. Of these, 57 made comments that included one or more of the 35 key words. Table 6 details the key words that appeared in these 57 comments, the issue identified because of it and the number of comments made in relation to each key word/theme or issue. The same table, with exemplar quotes is included in Appendix 9.

*Table 6 - Summary of Issues Identified by Dog Breeders*

<i>Issue No. as set out in Table 3</i>	<b>Key words used to identify issue</b>	<b>Issue identified in breeder survey in response to question 38</b>	<b>No. of comments on issue</b>
1	<b>Accountability</b>  <b>Transparency</b>	<b>Accountability and Transparency</b> A belief that breeders need to be accountable for the dogs that they breed and that their breeding practices should be more transparent – a licensing system required and more effective enforcement to assist in locating puppy farms	7
2	<b>Political</b>	<b>Animal Welfare - a political agenda</b> A belief that animal welfare as an agenda is often politically motivated	2
3	<b>Breeding Practice</b>	<b>Breeding practices and motivations</b> A belief that a proportion of breeders breed irresponsibly without regard to health or welfare of breeding stock or puppies, motivated by money not in the best interests of dogs or the breed and that no effective action is being taken by regulators to stop such practices. <b>Breeding practices and puppy farms/backyard breeding</b> Includes practices seen as puppy farms and backyard breeding that do not focus on good canine health	6  27
5	<b>Fads</b>	<b>Fads in Breeding</b> A belief that some breed because of a ‘fad’ or because a dog breed or colour is popular and to meet the demand of puppy buyers for a type of dog or look, without regard to puppy soundness	5
6	<b>Genetic</b>	<b>Genetic Testing and Breeding Selections</b> A belief that is supported in the literature, that many breeders do not do enough genetic testing and that they do not make careful enough breeding choices, and that this impacts on the health of puppies that are being sold.	4
8	<b>Selling Practice</b>	<b>Selling practices that do not support dog welfare and/or accountability</b> A belief that the ability to buy dogs over the internet or in a pet shop allows poor breeding and encourages lack of accountability	6

As can be seen in Table 6 above, 6 of the 10 issues that were identified by the analysis of the interview data (Data Set 1) have been identified by this data.

## 5. Summary of Major Findings

Four of the data sets have been examined in detail to pull out the major issues that these various stakeholder groups believe exist in dog breeding in Australia. Table 7 sets out the 10 major issues that have been raised by the data and notes which stakeholder group has raised each issue.

Despite having different views on many aspects of dog breeding in Australia, the stakeholders have similar views on what the major issues are and on the issues that exist with both the regulation and the regulatory framework. These findings are discussed in more detail in Part III of this Chapter.

Part III sets out the findings in relation to the methods that the stakeholders believe might best address these issues. The findings that are set out in Part III are considered in Chapter 10. Part IV contains a discussion of a number of these issues identified in Part II and the implications for the future of breeding.

*Table 7 - Summary of Findings on Major Issues*

No	Issue identified	Data set identified in			
		1	2	4	5
1	<b>Accountability and Transparency</b> Lack of accountability and transparency in breeding practices	X			X
2	<b>Animal Welfare - a political agenda</b> The belief that animal welfare is politically motivated so not regarded as an important social concern	X			X
3	<b>Inappropriate and poor breeding practices and motivations</b> Use of inappropriate breeding practices that do not focus on good canine health and welfare	X		X	X
4	<b>Lack of Compulsory De-sexing</b> Lack of compulsory de-sexing allowing irresponsible breeding to take place	X			
5	<b>Fads in Breeding</b> The belief that some breeders breed for the market 'fad' breeding without undertaking appropriate genetic testing and without understanding the impacts such breeding has on the health of the puppies that are being sold	X	X		X
6	<b>Genetic Testing and Breeding Selections</b> Failure by breeders to undertake appropriate genetic testing, that impacts on the health of puppies being produced	X	X	X	X
7	<b>Information Asymmetry</b> Lack of reliable data around breeding practices and a belief that breeders do not pass on all information about the puppies they sell; Confusion amongst buyers about who is a registered breeder and what they can provide; Concerns that many breeders do not actually understand their obligations under the codes;	X	X		
8	<b>Selling practices that do not support dog welfare and/or accountability</b> A belief that the ability to buy dogs over the internet or in pet shops reduces breeder accountability	X		X	X
9	<b>Overpopulation</b> A belief that there is over breeding that causes dog overpopulation	X	X		
10	<b>Stakeholder differences</b> A shared mistrust of other stakeholders, and a belief that each specific group is the best equipped to know what is best for dogs and in dog breeding	X	X		



### PART III. WAYS ISSUES CAN BE ADDRESSED

#### 1. Interview with Stakeholders (Data Set 1)

All 11 interview participants were asked the question:

*How do you believe such issues can be addressed?*

The same process and key words were used as described at the beginning of this Chapter to identify the interviewees' perceptions of how the issues could be addressed. The same process as set out in Figure 3 was used to develop themes around the ways that the issues can be addressed. These are set out in Table 8 below. The same table, with a selection of quotes as provided by interview participants, also appears in Appendix 10.

*Table 8 - Ways the Issues may be Addressed according to Interview Participants*

	Key words used to identify the solution	Possible ways that the issues can be addressed	Number of interview participants who identified issue
1	<b>Breeding</b>	Breeding registration and licensing	7 W1, W3, W4, W6, I2, I4, I5
2	<b>Breeding &amp; farm</b>	Banning of inappropriate breeding practices and creation of transparent breeding practices	5 W3, W4, W5, W6, I5
3	<b>Enforcement</b>	More effective enforcement of current regulation	7 W1, W3, W4, W6, I2, I4, I5
4	<b>Political</b>	Lobbying	4 W1, W6, I1, I5
5	<b>Advertising</b>	Restrictions on advertising & pet shop Sales	4 W1, W2, W6, I5
6	<b>Desex</b>	De-sexing programs initiative	4 W1, W3, W6, I2
7	<b>Breeder</b>	Incentive schemes/ rating systems for good breeders	3 W1, I2, I5
8	<b>Consumer</b>	Enhancing buyer's choice and consumer education	3 W2, W6, I5
9	<b>Code &amp; Standard</b>	National codes of conduct/standards or legislation	3 W1, I4, I5
10	<b>Breeder</b>	Site inspections of breeders' premises	3 W4, W6, I5
11	<b>Breed &amp; Information</b>	Mandatory breed identification paperwork	2 - I1, I2
12	<b>License/licensing</b>	Licensing of dog owners	1 - W5
13	<b>Consumer</b>	Enhancing consumer legislation	1 - W6

As can be seen in Table 8 above, 13 possible solutions/ways to address the issues were generated by the interview participants. Some are regulatory in nature, while others are approaches or strategies, such as the use of education:

*...education of dog purchasers and citizens will increase awareness of the harms that are being done to dogs in puppy mills and pet stores across the country. This education, in turn, will lead to citizens taking action by communicating with their legislators in such a mass that the problems may no longer be ignored. (W5)*

## 2. Library and Archival Industry Data (Data Set 2)

The library and archive search was considered using the same 35 key words. An analysis of this data set revealed 2 of the same issues which are set out in Table 9 below, using the same numbering as used in Table 8.

*Table 9 - Ways the Issues may be Addressed Identified in the Library and Archival Industry Data*

No	Key word (s) used to	Possible ways to address issues	Where in the data this issue was identified and article summary
5	Advertising	Restrictions on Advertising and Pet Shop Sales	One article provided qualified support by the Canine Authorities for the right of breeders to sell puppies in pet shops, provided the shops were approved and that there was legislation that allowed for such sales by reputable pet shops. <sup>9</sup> Searches did not reveal anything to suggest that the ANKC or the State and Territory canine associations did not support the use of online marketing to assist in selling their puppies. There were a number of mentions of the use of a webpage that supports registered breeders in advertising puppies.
6	Desex	De-sexing Programs Initiative	The ANKC and State and Territory canine associations raise concerns whenever legislation is proposed that considers compulsory de-sexing of dogs. These groups provide qualified support for the establishment of de-sexing programs and initiatives. These breeder associations respond to such proposals by seeking assurances that their member breeders are provided with exemptions to enable them to breed. <sup>10</sup> On this basis State and Territory canine associations do believe that such programs have merit for owners of non-breeding/non-show dogs. <sup>11</sup>

<sup>9</sup> Celeste Bryson, 'Pedigrees Have More Chance - Its Harder to Rehome Designer Dogs ', *Dog News Australia* (Hoxton Park ), 2009.

<sup>10</sup> Rob Jeffs, 'Push to Make Desexing Your Dog Compulsory ', *Dog News Australia* (Hoxton Park ), 2007.

<sup>11</sup> Celeste Bryson, 'Desex in QLD, Don't Sell in NSW, Don't Show in VIC', *Dog News Australia* (Hoxton Park ), November 2007 and Celeste Bryson, 'Mandatory Desexing Trial - Breeders Seek Assurance from CCCQ', *Dog News* (Hoxton Park ), 2008.

### 3. State and Territory Canine Association Survey (Data Set 3)

This data set provided a limited contribution to answering this component as the survey was not designed to collect data around it. What did emerge, however, was confirmation of the value of breeder accountability through breeder registration and licensing.

The State Executive Officer who completed the one returned survey indicated that that State or Territory association did keep accurate membership records and records in relation to complaints, and that they follow procedures when a complaint is received. The fact that registered breeders are required by their State and Territory canine association to register all puppies does enhance breeder accountability. Although only one survey was returned it was from one of the smallest of the State and Territory canine associations. It is fair to say that from perusing the web pages of the others that the other State and Territory canine associations do have complaint handing procedures in place. A copy of the process that is followed by Dogs Victoria (The Victorian Canine Association) sets out the procedure and the penalties that can apply. This enhances breeder accountability.<sup>12</sup>

### 4. Dog Breeder Survey (Data Set 5)

Breeders who participated in the dog breeder survey provided comments when they answered question 38. Question 38 asked participants:

➤ *Do you believe the current regulation of dog breeding in Australia is effective?*

The comments were searched for one or more of the key words and the solutions that were put forward are set out below in Table 10, using the same numbering as in Table 8.

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<sup>12</sup> Dogs Victoria, *Constitution, Rule and Regulations* (2017) <<https://dogsvictoria.org.au/members/members-area/members-resources/constitution-rules-and-regulations/>>.

*Table 10 - Ways the Issues may be Addressed according to Dog Breeders*

No	Key words used to identify a solution	Possible ways that the issues can be addressed as set out in question 38	Number of comments that identified the Solution
1	<b>Breeding</b>	Breeding Registration and Licensing	5
2	<b>Breeding &amp; farm</b>	Banning of Bad Breeding Practices – banning of puppy farms and the creation of transparent breeding practices	6
3	<b>Enforcement</b>	More effective enforcement of current regulation	11
5	<b>Advertising</b>	Restrictions on Advertising & Pet Shop Sales	5
7	<b>Breeder</b>	Incentive Schemes/ Rating System for Good Breeders	1
8	<b>Consumer</b>	Consumer Choice and Education	8
9	<b>Code &amp; Standard</b>	National Code of Conduct/ Standards Legislation	1
10	<b>Breeder</b>	Site Inspection of Breeder's Premises	2
11	<b>Breed &amp; Information</b>	Mandatory Breed Identification Paperwork	1
14	<b>Breeder</b>	Enhance the power of the ANKC to control breeders	5
15	<b>Motivate</b>	Remove the ability of breeders to profit from dog breeding	3
16	<b>Welfare</b>	Establishment of Litter Limits for breeding bitches and for breeders per year	6
17	<b>Genetic</b>	Mandate Genetic Testing by all Breeders	3

As can be seen in Table 10 above, nine of the 13 solutions that were identified by the analysis of the interview data were also identified in the breeder survey data. Another four possible solutions were identified:

- Enhance the power of the ANKC to control breeders;
- Remove the ability of breeders to profit from dog breeding;
- Establish litter limits for breeding bitches and for breeders each year; and
- Mandate genetic testing by all breeders.

Three of these solutions relate specifically to matters that might be addressed by an industry body, in this case the ANKC. Another suggestion is around breeder motivation, which is examined in more detail in Part III of Chapter 9.

The word ‘education’ was also searched for. This was done as the role of education in improving outcomes for dogs and owners has been considered previously in this research.

## 5. Summary of Major Findings

Table 11 below provides a summary of the ways that the issues can be addressed, according to the data obtained by this research.

*Table 11 - Summary of Ways the Issues may be addressed*

No	Possible ways that the issues can be addressed	Data set identified in			
		1	2	3	5
1	Breeding registration and licensing	X		X	X
2	Banning of puppy farms and creation of transparent breeding practices	X			X
3	More effective enforcement of current regulation	X			X
4	Lobbying	X			
5	Restrictions on advertising and the sale of puppies in pet shops	X	X		X
6	Implementation of de-sexing programs initiatives	X	X		
7	Breeder Assurance schemes / Rating system for good breeders	X			X
8	More education around consumer choices	X		X	X
9	National code of conduct and standard legislation	X			X
10	Site Inspection of breeder’s premises	X			X
11	Mandatory breed identification paperwork for all dogs	X			X
12	Licensing of dog owners	X			
13	More awareness around and effective use of consumer Law	X			
14	Enhancing the power of the ANKC and State and Territory bodies to control breeders		X		X
15	Removing the ability for breeders to breed exclusively for profit		X		X
16	Establishment of litter limits for breeding bitches and for breeders per year		X		X
17	Mandating genetic testing by all breeders				X

In total 17 ‘solutions’ or ways to address the major issues were drawn out of the data.

The next part of this Chapter sets out a discussion of the issues.

## PART IV. DISCUSSION

This Chapter has set out the research findings around research component 1 which sought; firstly, to understand the major issues facing dog breeding in Australia as perceived by stakeholders and; secondly to identify the ways that stakeholders perceive the issues might best be addressed. The 10 issues have been set out in Part II of this Chapter and summarised in Table 7 and the ways they can be addressed were considered in Part III and are summarised in Table 11. These options for addressing the issues are considered and incorporated into the framework that is set out in Chapter 10.

The discussion that takes place in this Part of the Chapter is devoted to considering the issues as set out in Table 7 that can be addressed using regulatory techniques. Three of the issues identified are not issues that can be resolved by the introduction of either regulatory or non-regulatory techniques. Looking at these 3 issues, Issue 2 was the belief that animal welfare as a social concern is politically motivated, that is raised by politicians in an effort to gain votes. The fifth issue relates to ‘fads’ in breeding. This is the belief that some breeders are motivated to breed dogs of a certain type or colour as the market demands. The final issue that is not discussed here is issue 10 which was the reality that there is a mistrust between a number of the stakeholders in dog breeding of the motivations and abilities of other stakeholder groups. Whilst this is not directly discussed it is acknowledged that the provision of the ability for groups to meet and consider the common problems in dog breeding might be an option to address this mistrust.

This leaves seven issues and this discussion considers how these issues align with the insights that were obtained from the critical analysis that took place in Chapter 3.

This discussion considers:

Issue number in this section	Issue number as set out in Table 7	Issue Identified
1	1	Accountability and transparency issues
2	3	Inappropriate and poor breeding practices
3	6	Genetic testing and breeding selection issues
4	7	Information asymmetry issues
5	8	Selling practices that do not support dog welfare and breeder accountability
6	4 & 9	Overpopulation and absence of compulsory de-sexing requirements

### 1. Accountability and transparency Issues

This research confirms that a lack of transparent breeding practices and breeder accountability is an issue in dog breeding. These findings add support to commentary from researchers in the disciplines of animal welfare and animal rights who for the last 30 years have stated how important transparency and visibility is in breeding practices in promoting and ensuring animal welfare.<sup>13</sup> Singer, for example asserts that many people falsely believe that the lives of dogs on puppy farms, out sight from those that ultimately buy their offspring, must not be that bad, or otherwise government or animal welfare advocates would take action to improve their circumstances.<sup>14</sup> Both Singer and Kelch believe that if the public could see the conditions in

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<sup>13</sup> Peter Singer, *Animal Liberation* (Jonathan Cape Ltd 1990 Pimlico edition, with a new preface 1995, 3rd ed, 1995), 217, Ike Sharpless, *Farm Animal Welfare and WTO Law - Assessing the Legality of Policy Measures* (Master of Arts in Law and Diplomacy Thesis, Masters Thesis, Tufts University 2008),<sup>4</sup> Siobhan O'Sullivan, *Animals, Equality and Democracy* (Palgrave Macmillan, 2011), Amy Morris, *Policies to Promote Socialization and Welfare in Dog Breeding* (Public Policy Thesis, Masters Thesis, Simon Fraser University 2013), 44 and Ralph A DeMeo and Bonnie Malloy, 'The Politics of Animal Law: Lessons Learned from the Environmental Law Movement' in Randall Abate (ed), *What Can Animal Law Learn from Environmental Law?* (Environmental Law Institute 2015) 43, 62

<sup>14</sup> Singer, above n 13, xxiii.

which many animals live and witness how they are slaughtered and transported, then outcomes for animals would improve.<sup>15</sup>

Animal advocacy groups such as Animals Australia, Oscars Law and the RSPCA have been campaigning for a number of years to raise visibility and transparency across several animal industries.<sup>16</sup> The RSPCA recognises:

*The ability to trace the origin of puppies to their mothers and breeders is crucial for facilitating appropriate regulation and transparency in dog breeding activities.*<sup>17</sup>

Dogs enjoy a highly visible place in our society and this thesis confirms that a majority of dog owners view their dog as either a companion or a family member.<sup>18</sup> Despite this, just over 50% of dog owners have no knowledge of how their dog was bred as many were acquired from shelters or rescue organisations. They can have no assurance of how the dog's parents were treated or how their dog was raised. It may come as a surprise to some owners that some breeders view their breeding dogs as stock and may take little care to ensure that these dogs have long healthy lives.<sup>19</sup>

If a puppy could only be purchased by visiting the breeding facility or premises and meeting the parents of the puppy then perhaps a number of companion dog buyers may revise their buying

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<sup>15</sup> Peter Singer (ed), *In Defense of Animals the Second Wave* (Blackwell Publishing 2006), 212 and Thomas G Kelch, 'Cultural Solipsism, Cultural Lenses, Universal Principles, and Animal Advocacy' (2014) 31(2) (April) *Pace Environmental Law Review* 403, 405.

<sup>16</sup> Animals Australia, *Demand CCTV in all Slaughterhouses* (2013)  
<[http://www.animalsaustralia.org/take\\_action/CCTV-cameras-in-slaughterhouses/](http://www.animalsaustralia.org/take_action/CCTV-cameras-in-slaughterhouses/)>.

<sup>17</sup> RSPCA Australia, 'Legislating to End Puppy Farming - The Way Forward' (2012)  
<<http://kb.rspca.org.au/afile/508/99/>>, 2.

<sup>18</sup> Sophie Hall et al, *Companion Animal Economics* (CABI, 2016), 1.

<sup>19</sup> In May 2013 Ray White Real Estate in Queensland advertised for sale a mixed farming property for sale complete with 'breeders' showing photos of dogs in runs and kennels. Not long after this advertisement was put up advocacy group Oscar's Law lobbied for it to be removed and it was. See Appendix 12. Even since commencing this PhD this type of advertising has disappeared thanks to the pressure put on by groups such as Oscar's Law.



patterns. The current reality is that a significant portion of dog breeding takes place in large breeding facilities and backyards across Australia, away from public sight.

The role that regulation by licensing, the establishment of a robust dog identification system and other regulatory and non-regulatory techniques can all play in improving breeder accountability, transparency and in ensuring more appropriate breeding practices is explored in Chapter 10.

## 2. Inappropriate and poor breeding practices

This research identifies poor dog breeding practices and the existence of puppy farms as major concerns in dog breeding. The issue of poor breeding practices generated a lot of data that has been considered in this thesis. Stakeholders felt that dog welfare and the quality of puppies produced suffers when breeders are able to engage in practices that do not utilise appropriate care and welfare considerations and are not based on best practice guidelines. The critical analysis that took place in Part III of Chapter 3 confirms that the community dislikes breeding practices that do not appropriately consider canine health and welfare. This research confirms that dog owners and the other stakeholders (as a subset of the community) also dislike the concept of the factory farming of dogs.

Both dog owners and dog sellers believe that there is a link between poor breeding practices and breeders' motivation. As has been set out in the Part I of this Chapter, a proportion of stakeholders believe that it is the pursuit of profit that leads to breeding practices that do not provide appropriate levels of care for breeding dogs and appropriate levels of merchantability for puppies.

This research provides support for the research undertaken by Morris who also confirms that both consumer dissatisfaction and canine welfare and health issues often result from poor breeding practices.<sup>20</sup> The role that codes, improved enforcement and other regulatory and non-regulatory techniques may play in improving breeding practices is explored in Chapter 10.

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<sup>20</sup> Morris, above n 13, 44.

### 3. Genetic testing and breeding selection

That some dogs are bred in a way that does not consider the full impact of their genetics and parental selection was identified as a canine welfare and health issue in Section 4 of Part III of Chapter 3. This thesis confirms that this is an issue. As set out in Chapter 3, the introduction of regulatory mechanisms that might introduce genetic and breeding program selectiveness have been considered in the UK for a number of years and was suggested by Morris as being required to improve breeding in British Columbia.<sup>21</sup>

Whilst some breeders in Australia do undertake appropriate genetic testing regulation and some of the State and Territory breeding codes do recommend and mandate some genetic testing this thesis suggests that more regulation may be required that promotes breeding that ensures genetic, physical and mental wellbeing of all dogs. The role that the inclusion of mandatory genetic testing and rules around breeding stock may play addressing this aspect of canine welfare and health is considered in Chapter 10.

### 4. Information asymmetry

Information asymmetry has been identified as one of the consumer protection issues that was considered in Part III of Chapter 3. This research confirms that information asymmetry is an issue in dog breeding in a number of ways: breeders not understanding what their regulatory obligations are; breeders not understanding what amounts to best breeding practice; breeders not supplying potential dog buyers with the full information that is required to enable buyers to make informed acquisition choices; and regulatory actors not having enough information to identify or locate all commercial breeding facilities and puppy farms; and the use of misleading advertising and inappropriate methods to sell puppies;

This research has found that most dog breeders are aware of what their dogs need in terms of physical and mental health and the breed characteristics and ongoing needs of the puppies that they breed. Nearly half of those that acquire a dog do not meet the breeder. Of those that do,

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<sup>21</sup> Ibid, 44 and see the literature considered in Section 2 of Part II of Chapter 3 in particular the UK Kennel Club (UK) Dog Health Group Annual Reports from 2010 to 2015.

many are not provided with enough information to ensure that they have full insight into their dog's ongoing requirements. This confirms that there is often information asymmetry between breeders and owners. These findings lend support to Morris's findings in British Columbia which has been considered in Part III of Chapter 3.<sup>22</sup>

Buyers' lack of knowledge about sellers has a direct impact on dog welfare. This research confirms work undertaken by Rohlf who confirms that many dog buyers who have acquired a dog with undisclosed genetic defects or with behavioural issues may choose to abandon the dog, surrender it or have it euthanized.<sup>23</sup> Many who acquire dogs may not be aware of how those dogs have been bred, just as many who purchase food from supermarkets are not aware of how animals commercially grown for food have been raised or processed. There is a role for regulation in raising awareness and reducing information asymmetry and the introduction of mandatory disclosures is considered in Chapter 10.

#### 5. Selling practices that do not support dog welfare and accountability

This research identifies the way that some dogs are sold as an issue for stakeholders. Stakeholders expressed issues with selling practices that allowed puppies to be sold over the internet and through pet shops. The concerns centred not so much on the actual methods used but, on the reality, that the use of some methods to sell allow breeders to remove themselves from some aspects of breeder accountability, including from the provision of information and support to puppy buyers.

Existing State and Territory and industry codes contain regulation around the sale of puppies and these details have been set out in Section 2 of Part V of Chapter 5. The industry code in Victoria precludes members from selling puppies to wholesale commercial sellers or pet shops unless accredited by the Victorian Canine Association Inc. or the Pet Industry Association of Australia.

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<sup>22</sup> Ibid, 44.

<sup>23</sup> Vanessa Ilse Rohlf, *Beliefs Underlying Dog Owner's Management Practices* (Doctor of Philosophy Thesis, PhD Thesis, Monash University 2013), 34.

The codes all contain regulation that mandates the provision of information when dogs are sold, irrespective of the type of method used to advertise or sell the dog.

This research has found that owners acquire their dogs in many ways and some of these are considered in more detail in Part II of Chapter 9. There are many ways that dogs can be advertised as being for sale and many ways that buyers can find puppies.

Despite the concerns voiced about the various realities around how dogs are advertised and methods for selling none of the owners that undertook the dog owner survey indicated that they had used any of the provisions in any codes in relation to how and where puppies should be sold or in relation to the information that should be provided at the point of sale.

## 6. Overpopulation and absence of compulsory de-sexing

This research identifies that dog overpopulation is an issue for stakeholders. This research lends support to the work done by Rohlf, Marston and others.<sup>24</sup> As found in Part II of this Chapter, a number of interview participants felt strongly about this issue. An illustrative comment:

*We (rescue organisation) exist because there are too many dogs and cats, that is what we say in our screed, we long for the day when we are not needed, because we are needed because there is too much breeding. (W5)*

A number of interview participants believed that the lack of appropriate de-sexing practices by owners and the lack of support by appropriate bodies such as local councils and welfare groups is an issue in Australia as it allows dogs to breed and adds to overpopulation and dog welfare issues. One interview participant confirmed:

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<sup>24</sup> Ibid, 169, Linda Marston et al, 'Review of Strategies for Effectively Managing Unwanted Dogs and Cats in Queensland - A Report to the Department of Primary Industries and Fisheries, Queensland ' (Monash University 2008 2008) <[http://www.daff.qld.gov.au/\\_\\_data/assets/pdf\\_file/0005/50873/L-Marsden-MUCD-Report.pdf](http://www.daff.qld.gov.au/__data/assets/pdf_file/0005/50873/L-Marsden-MUCD-Report.pdf)>, Linda C Marston and Pauleen C Bennett, 'Admissions of Cats to Animal Welfare Shelters in Melbourne, Australia' (2009) 12(3) *Journal of Applied Animal Welfare Science* 189, Linda C Marston, Pauleen C Bennett and Grahame J Coleman, 'What Happens to Shelter Dogs? An Analysis of Data for 1 year from Three Australian Shelters' (2004) 7(1) *Journal of Applied Animal Welfare Science* : JAAWS 27 and P D McGreevy and P C Bennett, 'Challenges and Paradoxes in the Companion-animal Niche' (2010) 19(1) *Animal Welfare* 11.

*I am a very big believer in and have been for years that all our pets are de-sexed, straight away at 12 weeks before they go. (I2)*

The role of de-sexing programs and initiatives as a solution to dog overpopulation is considered as part of the regulatory changes suggested in Chapter 10.

## PART V. CHAPTER SUMMARY

This research confirms that stakeholders have an awareness of the issues in dog breeding and have a view on the ways that the issues can be addressed. Many of the stakeholder groups in dog breeding in Australia have a united voice in terms of identifying the major issues in dog breeding and the various ways that they might be addressed. They see that there are real issues with a lack of accountability, poor breeding practices, selling practices that allow puppies to be sold to ill-informed buyers that do not seek the appropriate information to ensure that they can support any puppy or dog that may have health or behavioural issues or who might not suit their lifestyle. Stakeholders believe that these poor selling practices create an increased risk of dogs being abandoned or left to the care of animal rescue organisations or council shelters.

Having identified both the issues and a number of solutions to them in this Chapter, the next Chapter considers what role regulation currently plays and the issues that exist with current regulation.

## CHAPTER 7: WHAT ROLE DOES REGULATION PLAY?

### PART I. INTRODUCTION

This Chapter addresses the second component of the research question by considering stakeholders' perceptions of the role of regulation in dog breeding. The examination of the current regulatory framework and critique of its deficiencies set out in Chapters 2 and 3 confirm that there are major issues in dog breeding and that regulation plays a substantial role in improving outcomes for animals.

Both Parliament and other interested regulatory agencies seek to improve the living conditions of companion animals. Developing scientific understanding makes it clear that, if humans continue with their strong desire to keep companion animals, regulation is needed to codify what has in the past commonly been left to human judgement. This ensures that humans provide companion animals with appropriate care as not all humans are able to set benchmarks for their own animal husbandry.<sup>1</sup> Legal interventions are therefore necessary to act as both regulatory mechanisms and educative tools.<sup>2</sup> Just what the role of regulation should be in dog breeding can be considered in a number of ways. To answer this question this Chapter gathers stakeholders' perceptions, directly through interviews and surveys and indirectly through an industry library and archival search.

This Chapter examines:

- what stakeholders perceive the role of regulation should be in ensuring that dogs are provided with the care that they need and in ensuring that they are bred in ways that give them the best chance of being healthy long-lived companion animals; and
- stakeholders' perceptions of the issues with the current regulatory framework in achieving these outcomes.

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<sup>1</sup> DM Broom and KG Johnson, *Stress and Animal Welfare*, Animal Behaviour (Kluwer Academic, 1993), 72.

<sup>2</sup> Mike Radford, *Animal Welfare in Britain: Regulation and Responsibility* (Oxford University Press 2nd ed, 2002), 294.

Dogs are unable to voice their own concerns and stakeholders are able to represent them and the community, a community that values the benefits that dogs bring to the lives of many. Part II outlines the findings that come from an examination of the data obtained by this research on the roles that stakeholders believe regulation has in dog breeding in Australia and the stakeholder's perceptions of the issues with the current regulatory framework. Part III contains a discussion about these perceived roles and issues with the current regulation and Part IV contains a Chapter summary. This Chapter extends the findings set out in Chapter 6 that considered the major issues in dog breeding and the ways that stakeholders perceived they could be addressed. This Chapter focuses more specifically on the role for regulation and the perceived issues with the regulatory framework. It is acknowledged that there is some overlap between some of the findings in Part III of Chapter 6 and the findings set out in Part II of this Chapter. Both sets of findings are considered in more detail in Chapter 10 where the establishment of a responsive regulatory framework is discussed.

## PART II. STAKEHOLDERS' PERCEPTIONS ON THE ROLE OF REGULATION IN DOG BREEDING

This Part of the Chapter explores stakeholders' perceptions on the role of regulation in dog breeding. This is done by considering the answers provided by the various stakeholder groups in 4 of the data sets in response to questions on the role of regulation in dog breeding.

### 1. Interviews with Stakeholders (Data Set 1)

Interviewee responses to their views on the role of regulation in dog breeding were analysed using the key words outlined in Part IV of Chapter 5. Table 12 below sets out the key words and resulting roles that were identified in participants answers. The process of extraction of themes and roles followed the same process as set out in Figure 3 contained in Chapter 6.

Interview participants collectively raised 4 roles that regulation plays in dog breeding; namely:

- to set standards of care for dogs, both breeding stock and puppies produced;
- to eliminate irresponsible breeding practices;
- to ensure puppies are as healthy as possible by reducing genetic diseases; and
- to reduce dog overpopulation.

Table 12 - Role of Regulation According to Interview Participants

No	Key words used to identify role of regulation	Role identified	Participants who identified issue	Sample quotes from interview participants
1	Breeding Code Standard	To set standards of care for dogs, both breeding stock and puppies produced	6 W1 W2 W3 W4 W5 I1	<i>There needs to be reliable factors that both consumers and animals can rely on ..... standards need to be put into place and that is all the role of legislation. (W4)</i>  <i>To ensure dogs are bred in a humane and caring environment ... (I1)</i>
2	Breeding Practice	To eliminate irresponsible breeding practices	3 W1 W6 I5	<i>Dogs are being bred to create particular looks and they end up with welfare problems because of exaggerated traits that people have bred for. (W6)</i>  <i>By the licensing of breeders and the enforcement of that licensing and sellers that would really not only protect dogs but it's the whole community pays for the management of unwanted or stray dogs. (W1)</i>
3	Health Genetic	To ensure puppies are as healthy as possible by reducing genetic diseases	3 W3 W6 I1	<i>Why because um if you let people breed a Bulldog say without any sort of research into the background about them you might be breeding genetic issues into them so that, so a lot of Bulldogs have a lot of breeding problems and that is a big thing with me, the regulations or the breed standards should be changed to let them breed them with the nose a bit longer to let them help with their breathing and things like that. I just think that people perhaps don't always do what is best for the dog they often do what is best for them and I think we need the regulation to stop them doing what is best for them.</i>
4	Breed Enforcement Licensing	To reduce dog overpopulation	1 W1	<i>I think clearly from the shelter point of view we want to see less unwanted dogs and it's a constant frustration I guess to see a lot of dogs being bred, wherever they may be bred knowing that there are already so many waiting for homes. So, by the licensing of breeders and the enforcement of that licensing and sellers that would really not only protect dogs, but it is, the whole community pays for the management of unwanted or stray dogs and I think that by tightening up the legislation around breeding and selling. (W1)</i>



Having identified what interview participants perceive to be the roles for regulation in dog breeding, it is also important to consider their perceptions around the problems with the current regulatory framework.

A consideration of what aspects of the regulatory framework are failing and the ways that it can be improved are considered here using the key words developed and set out in Part IV of Chapter 5. The same process was undertaken as set out in Figure 3. As can be seen from Table 13 below, 7 issues with the current regulatory framework, are identified. Some of these issues were identified by several interview participants and the number of interview participants highlighting each issue is set out in the table. The same data, with quotations from the interview participants is set out in Appendix 11.

*Table 13 - Summary of Regulatory Issues Identified by Interview Participants*

No	Key words	Regulatory issue identified	Participants that Identified this Issue
1	<b>Problem Regulation</b>	<b>Complexity of the Regulatory Framework</b> A belief that regulation: <ul style="list-style-type: none"> <li>• Is inconsistent across States</li> <li>• Applies to some breeders and not to others</li> <li>• Should include codes of animal practice based on scientific evidence and that all dogs should receive this level of care</li> <li>• Is not something that all breeders are aware of or understand</li> <li>• Focuses on some aspects of breeding but not always the important ones</li> </ul>	7  W1, I1, W3, I3, W4, I4 & W5
2	<b>Problem Regulation</b>	<b>Dogs as Property</b> A belief that the law treating dogs as property allows for poor treatment and for breeders to view them as products	1 I3
3	<b>Problem Regulation</b>	<b>Regulation is not properly resourced or funded</b> A belief that regulation is not properly resourced or funded	1 I5
4	<b>Enforcement Monitor</b>	<b>Enforcement and/or monitoring of breeders</b> A belief that regulation is not enforced and monitored effectively	3 W1, W3, W4
5	<b>Code Standard Effective</b>	<b>Ineffective Codes and Standards</b> A belief that codes and standards are inadequate in some respects	1 W1
6	<b>Licence Breeder</b>	<b>Licensing of Breeders and/or permit system</b> A belief that there is a need to licence all breeders	5 W1, W2, W3, W4, W6, I5
7	<b>Breed Regulation</b>	<b>Breed Specific Legislation</b> A belief that breed specific regulation is not fair and should be abolished. It should be replaced with ' <i>a blame the deed not the breed</i> ' approach	2 I1, I2

## 2. Library and Archival Industry Data (Data Set 2)

As part of the data collection stage, as set out in Chapter 5, archival materials that expressed views on the role of regulation and issues with the regulatory framework, or that suggested ways to improve the regulatory framework, were considered and photographed. Again, the key words set out in Part IV of Chapter 5 were used as articles were read. Each time a key word was found a photograph was taken. The article that was photographed was subsequently read in full to determine the purpose of the article and the views expressed within it.

Given that this data set comes from archival and library material prepared by and for supporters of the hobby of pure breed dog breeding and from gazettes published by the State and Territory canine associations, it comes as no surprise that as the analysis of this material was conducted it emerged that the material generally is critical of any regulation that attempts to limit the rights of dog breeders.

It is acknowledged that this data is representative of the views of industry stakeholders. It is however important to consider it here as it does provide data around how breeders and those that represent them perceive the regulatory environment and the issues that exist for breeders because of it. The views of registered breeders and the role that their industry body, the ANKC, can play into the future is considered in detail in Chapter 10 so a consideration of this data here is relevant.

Statements were found in articles to the effect that proposals seeking compulsory de-sexing and tighter rules around advertising puppies are too restrictive on hobby breeders and therefore needed to be lobbied against.<sup>3</sup> The material evidenced that many breeders believe that regulation continues to tighten around ownership and breeding, and that for some breeders this

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<sup>3</sup> Celeste Bryson, 'Desex in QLD, Don't Sell in NSW, Don't Show in VIC', *Dog News Australia* (Hoxton Park ), November 2007 and Rob Jeffs, 'Push to Make Desexing Your Dog Compulsory ', *Dog News Australia* (Hoxton Park ), 2007.

has meant that they have felt compelled to move to more remote areas around the country to continue breeding out of the spotlight of regulators.<sup>4</sup>

A number of articles and gazettes going back to 1978 raised concerns about restricted breeds. A couple of articles reflected on what responsible breeders around Australia could and should do to stop the regulation of restricted breeds. These articles viewed this type of regulation as a breach of personal privacy and civil liberties.<sup>5</sup> An article printed in 1994 indicated that there was urgent need for politicians to reach agreement on dog laws, and that legislation should punish deeds done by aggressive dogs and not breeds.<sup>6</sup> Today we still have restricted breed legislation. Two of the industry stakeholders interviewed raised the existence of restricted breed legislation as a regulatory issue. This is set out as issue 7 in Table 13 above.

### 3. Dog Owner Survey (Data Set 4)

As dog owners are a significant stakeholder group it was important to obtain data to determine their understanding and awareness of the regulatory framework around dog ownership. The major question around how regulation impacts on dog owners was question 26.

- *Have any of the laws around dog ownership and dog management ever been enforced against you or by you?*

The intention of asking such a question was threefold:

- to determine which regulation impacts the most on dog owners;
- to determine if owners use regulation to make breeders accountable for health and welfare issues that dogs may have; and
- to consider how aware dog owners are of the regulation of dog breeding.

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<sup>4</sup> Celeste Bryson, 'Dog World Reacts Swiftly ', *Dog News Australia* (Hoxton Park ), 2009, 1.

<sup>5</sup> Frances Sefton, 'Change & Growth For Dogdom Continue in 1978' (*National Dog*, 1978), 111.

<sup>6</sup> Wendy Slatyer, 'The Year Commonsense Finally Won Through ' (*National Dog* 1994), 2.

The quantitative data obtained from this question is set out in Table 14 below.

*Table 14 - Dog Owner Survey Question 26*

<i>Q26 - Have any of the laws around dog ownership and dog management ever been enforced against you or by you? (E.g. has council ever fined you for not having a dog licence or you took legal action over an issue with your dog?)</i>		
Answer Choices	Number of responses	%
Yes	191	7.53
No	2345	92.47
Total	2536	

This reveals that the majority of dog owners, over 92%, have not had dog ownership or dog management regulation enforced against them, nor have they used any of the regulatory framework to assist them with any issues associated with the ownership or acquisition of their dogs. Participants were given the opportunity to comment and 192 chose to do so. These comments were analysed and summarised in Table 15 below with each comment classified into the appropriate component of dog regulation set out in Chapter 2:

- dog ownership;
- dog management;
- dog welfare; and
- dog breeding and selling.

Table 15 - Dog Owner Survey Regulation mentioned in Response to Part 2 of Question 26

Issue	Number of Comments	Examples of Comments
<b>Component of the regulatory framework that this comment covers – Ownership</b>		<b>TOTAL NUMBER OF COMMENTS 1</b>
Issue against breeder	1	<i>Had to involve police to get right to register puppy as mine after breeder said she did not mean to give him away! Still never received the pedigree papers.</i>
<b>Component of the regulatory framework that this comment covers – Management</b>		<b>TOTAL NUMBER OF COMMENTS 163</b>
Breed specific legislation	3	<i>I had a Staffy X (96.4% Staffy) who was a national obedience champion who was wrongfully classed as a Pitbull and was threatened with euthanasia, so I had to fight legally to clear his (&amp;my) name. We won.</i>
Dangerous dogs, dog attacking people or other animals	33	<i>When my dog was attacked by the neighbour's dog I reported it to the Council. My dog was on a lead and being walked by me, the other dog had escaped from its yard, and had, as it turned out, attacked other dogs and a person that same day. If another person had not intervened I believe that I would have been attacked, or my dog killed. I reported the dog, the same day other people who had been attacked or had their dog attacked by the escaped dog also reported their incidents (none of us knew the others had also had incidents that day). The Council took action against the owners of the dog, and the dog was removed from the property.</i>
Dog at large	62	<i>I was fined for having a dog at large. My dog was picked up at our front gate and taken to the pound. Since then I have ensured a phone number is on the dog's collar.</i>
Kennel licence or too many dogs	16	<i>I am compelled to have a permit to keep the third dog, for which I have to pay every year, and which I strongly resent. I do not believe I should have to pay to renew my permit every year, as all three of my dogs are registered. I have never had a complaint made against me regarding my dogs, and they have never been picked up by pounds etc. I am being penalised for doing the right thing, where people all around me get away with not registering their dogs, or letting their dogs wander etc. Over the life of this third dog I will have been penalised to the tune of around \$800 or more dollars via annual permit fees, for doing nothing at all wrong. I don't mind paying for the initial permit, but believe the yearly payments are completely unjustified and a cash cow for council, when they have had nothing to do in relation to this permit apart from sending out renewal notices. I was moreover EXTREMELY offended when in the second year of having this dog, a council employ informed me that my being given a permit to have this dog was a privilege afforded to me by council, which could be revoked at any</i>

		<i>time if they chose. This made me furious!! If I can care for a dog, and do so without causing problems for others, then doing so is my RIGHT! It is council's job to help me do that, not patronise me so bloody appallingly!</i>
Noisy dogs	21	<i>I requested our local council send a letter to a neighbour to ensure that they knew that their dog was barking all day.</i>
Restricted area or dog off lead	21	<i>I was fined for having my dog off leash on a beach once</i>
Unregistered dog or not wearing tag or unchipped	27	<i>Yes, we were fined for not having him registered the council came around to the house and practically helped themselves to the backyard.</i>
<b>Component of the regulatory framework that this comment covers – Dog welfare</b>		<b>TOTAL NUMBER OF COMMENTS 7</b>
Cruelty or welfare issues	7	<i>I had a neighbour's dog removed after reporting that she was not feeding the dog regularly and it was living in an enclosed space surrounded by faeces.</i>
<b>Component of the Regulatory Framework that this comment covers – Dog Breeding and Selling</b>		<b>TOTAL NUMBER OF COMMENTS 3</b>
ANKC or State or Territory canine association Issue	3	<i>State ANKC - complaint at trial level. Resolved. Suspension from CAWA for 6 months. Dog behaviour. I have had lawyers involved over a contract for an imported dog due to the other owner attempting to change the terms of the agreement. It didn't go beyond that point.</i>
<b>Component of the Regulatory Framework that this comment covers – Other</b>		<b>TOTAL NUMBER OF COMMENTS 18</b>
Miscellaneous comments	18	<i>Council approved for hot air balloons to take off and land from a tourism perspective and did not consider the ramifications to pets that fear and are traumatised by such. Evidence demonstrates that dogs, herd animals and other animals run like the wind in fear of looming great objects letting off bursts of noise and flames, disturbing neighbourhoods and resident's rights to peace and peace for their animals. Council makes decisions without looking at the impact and yet, would then declare such an animal that escapes in terror, with a behaviour problem and that it should be called a nuisance if it escapes twice in one year! Council then would order such a dog to be enclosed in a steel enclosure. Council then would choose to allow breaches of hot air balloons over homes only about 50-100 feet above homes, yet the minimum they are allowed is 1000 feet.</i>
		<b>TOTAL COMMENTS 192</b>

From an examination of the data set out in Table 15 above, the vast majority of comments were from dog owners who had personal experiences around dog management and control. Comments centred around their own dogs, or on how they had complained about the noisy or other bad behaviour of dogs belonging to others.

Turning to a consideration of any issues that owners experienced around breeder accountability, the data reveals that only one participant had used regulation to make a breeder accountable, and this related to pedigree and registration issues. Two other participants reported on matters that dealt with pure breed dog breeding, and only one provided a comment that involved an ownership dispute. This involved a dog that was imported into Australia. None of the participants reported on using regulation to assist them to recover damages from a breeder who sold them a dog with any genetic, health or temperament issues.

#### 4. Dog Breeder Survey (Data Set 5)

As breeders are subject to all aspects of the regulatory environment that regulates breeding it was important to obtain data to determine their perceptions and awareness of the regulation that impacts on their breeding.

Dog breeders were asked if they were aware of their rights and obligations as a dog breeder. Two hundred and twenty participants answered this question. The vast majority of them, over 96% indicate that they were either fully or somewhat aware of their obligations as a dog breeder. Of the remaining 3.5%, slightly less than one third indicated that they were not at all aware of their rights and obligations as a breeder.

Dog breeders were also asked if they believe the current regulation of dog breeding in Australia is effective. Two hundred and fifteen participants answered this question. A majority, 179 (83.26%) indicated that they did not believe that the current regulation was effective. One hundred and seventeen participants' added comments which were analysed using the key words listed in Part IV in Chapter 5, as summarised in Table 16 below.

*Table 16 - Summary of Regulatory Issues Identified by Dog Breeders*

Number	Key words	Regulatory issue identified	Number of comments
1	Accountability Problem Regulation	<b>Complexity of the regulatory framework</b> Inconsistencies between State and local laws Involvement of the RSPCA Need for consistent national regulation	13
2	Protect Problem Welfare	<b>Dogs as property</b> Both breeders and regulation treat dogs as property, so breeders are able to breed without consideration of dog welfare	3
3	Enforcement Effectiveness Monitor	<b>Ineffective enforcement of regulation</b> Not enough monitoring and enforcement, and some of it is left to a non-government organisation	14
4	Sale Sell Factory	<b>Sale of puppies in pet shops</b> A belief that regulation should exist to stop the sale of puppies from pet shops	12
5	Code Standard Regulation	<b>Issues with breeding codes and standards</b> A one size fits all approach That codes make things hard for hobby breeders as they tend to be prepared to control large scale breeding practices and do not take into account smaller breeders In some states, the code that that Canine Association has is the only code	10
6	Licence Problem Breeder	<b>Lack of a breeder licensing system</b> A belief that breeders should be licensed to enable breeding	15
7	Breeder Regulation Problem	<b>Current regulation discriminates against and restricts good breeders</b> Existence of regulation that does not distinguish between various breeders, therefore penalising breeders who do the right thing	32



## 5. Summary of Major Findings

The interview with stakeholders and the surveys to dog owners and breeders as considered above have provided insight into the role of regulation in dog breeding. Table 17 below identifies the 4 major roles that the stakeholders believe dog breeding regulation should address.

Four of the data sets also identified seven major regulatory and legal issues. Table 18 below provides a summary of the eight regulatory issues identified by the stakeholders, with six of them having been identified as an issue by more than one of the stakeholder groups.

It is interesting that despite having different views on many aspects of dog breeding in Australia the stakeholders have similar views on how the issues might be addressed, and on the role that regulation should play in addressing them.

Table 17 - Summary of Major Roles of Regulation

What is the role of regulation in dog breeding?					
			Data Set		
			1 – Interviews with stakeholders	4 – Dog owner survey	5 – Dog breeder survey
1	Breeder accountability	To set standards of care for dogs, both breeding stock and puppies produced	Yes	Yes	Yes
2		To eliminate irresponsible breeding practices	Yes		Yes
3		To ensure puppies are as healthy as possible by reducing genetic diseases	Yes		
4	Address dog overpopulation	To reduce dog overpopulation	Yes		

*Table 18 - Summary of Regulatory Issues*

Issue Identified		Data Set			
		1	2	4	5
1	Complexity of the regulatory framework	Yes	Yes		Yes
2	The law's treatment of dogs as property enables breeders to treat dogs as products	Yes			Yes
3	Regulation that is not properly resourced or funded	Yes			
4	Ineffective monitoring and enforcement	Yes		Yes	Yes
5	Ineffective codes and standards	Yes			Yes
6	Non-existence of a licensing system for breeders	Yes		Yes	Yes
7	Breed specific legislation	Yes	Yes		
8	Absence of regulation restricting where dogs are sold				Yes

### PART III. DISCUSSION

This research has identified 4 major roles for regulation in dog breeding. These roles are set out in Table 17 above. Three of these roles centre on creating breeder accountability and one addresses the perception that dog overpopulation is a concern in Australia. Stakeholders believe that regulation should play a role in setting of standards for dog breeding and in eliminating irresponsible breeding and selling practices. These roles have been identified by several key stakeholder groups who also believe that the current regulatory framework fails to meet these roles.

Stakeholders identify a number of issues with the current regulatory framework and these are set out in Table 18. Stakeholders believe that the current regulatory framework is too complex, under resourced and ineffectively monitored and enforced. They see as a concern the lack of a robust licensing system and regulation that regulates the selling practices of breeders. The existence of these inadequacies makes the stakeholders believe that the current regulatory framework is not achieving its purpose roles in ensuring breeder accountability and in the reduction of dog overpopulation.

The role of codes and standards within this framework has also been identified and the ineffectiveness of these codes and standards and how they are resourced, monitored and enforced are seen as regulatory issues that need addressing. As will be set out in Chapter 10, codes that are properly drafted, effectively monitored and used as part of a compliance system have a role in dog breeding.

### PART IV. CHAPTER SUMMARY

The analysis undertaken in this Chapter provides an answer to the second research component by revealing four major roles for regulation. Essentially, stakeholders believe that regulation should be ensuring breeder accountability. This Chapter also reveals that stakeholders perceive that there are issues with the current regulation. Stakeholders do not believe that the current regulatory framework is effective in carrying out its roles in establishing breeder accountability as it does not: protect dogs; provide guidelines for appropriate breeding practices; and ensure that dog breeding codes are effectively monitored and enforced.

This Chapter considered stakeholder's views on the effectiveness of the current regulatory framework by asking them to consider their knowledge of the framework and the views on the issues within it.

The next Chapter uses methods for assessing the effectiveness of the current dog breeding regulation and regulatory space in Australia that were developed in Chapter 4. Chapter 8 makes findings on its effectiveness by analysing the data obtained from the five data sets.

## CHAPTER 8: EFFECTIVENESS OF CURRENT REGULATION

### PART I. INTRODUCTION

This Chapter addresses the third component of the research question by considering how effective the current regulatory environment is in ensuring appropriate canine welfare and outcomes for consumers.

The analysis that took place in Chapter 3 and the findings set out in Chapters 6 and 7 confirm that stakeholders are united in voicing concerns about how dogs are being bred in Australia. Chapter 7 confirmed that the stakeholders that participated in this research believe that the major roles of regulation are:

- the setting of breeding standards;
- the elimination of irresponsible breeding practices;
- the enhancement of puppy welfare and health; and
- the elimination of dog population.

These roles are not dissimilar to those that are set out as objectives in both the *Domestic Animals Act 1994* (Vic) and the Victorian Canine Association Inc's Constitution which were considered in more detail in Part VI of Chapter 4. Both the State Government Act and the State Industry code/constitution have as purposes in relation to breeding: -

- the promotion of dog welfare;
- the regulation/registration of breeding; and
- the raising of standards in breeding.

This research confirms that there is a shared awareness of the issues that impact on dog welfare in dog breeding. Both the legislation and the stakeholders that participated in this research believe that regulation should play a role in addressing the issues. As has been considered in Chapter 6, stakeholders feel that the current regulatory framework is itself an issue that needs to be addressed as it does not promote dog welfare or adequately regulate breeders or raise standards in breeding.

To explore the validity of these claims it is necessary and appropriate to examine the effectiveness of the current regulatory framework in the light of the regulatory theory critiqued in Chapter 4. This theory provides methods of assessing the effectiveness of regulation and regulatory space. These methods are used to understand the effectiveness of some of the components in the framework; namely codes and the enforcement and monitoring activities of current regulators.

As has been illustrated in Chapters 1 and 2, the regulatory environment that regulates dogs (as set out in Figure 1) is comprehensive. It is therefore not possible to measure the effectiveness of the whole framework. Work has been undertaken by Cooke that considers the puppy farming problem and that examines the role of State and Territory anti-cruelty, animal welfare and breeding establishment codes in raising the standard of living for companion dogs and puppies. She confirmed an existence in of inconsistencies and regulatory gaps.<sup>1</sup> What has not been considered in Australia is the effectiveness of self-regulation by an industry regulatory actor such as the ANKC. This thesis focuses on the effectiveness of codes and the ANKC as an industry regulatory actor.

The following four questions (drawn from the literature reviewed in Parts III to VII of Chapter 4) are considered in the examination of effectiveness of codes and regulators in the dog breeding industry. Two of these questions consider ways to test effectiveness of codes and the other two, focus on the effectiveness of regulators.

*Table 19 - Evaluating Effectiveness of Regulation and Regulators*

Effectiveness of Regulation	Effectiveness of Regulators
Codes	Enforcement and Monitoring
Does the regulation meet its intended objectives?	Are the regulators accountable?
Is the regulation understandable and does it meet stakeholder expectations?	Are codes appropriately enforced and monitored?

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<sup>1</sup> Katherine Cooke, 'Defining the Puppy Farm Problem: An Examination of the Regulation of Dog Breeding, Rearing and Sale in Australia' (2011) 5 *Australian Animal Protection Law Journal* 3 , 24.

## PART II. EVALUATING EFFECTIVENESS OF REGULATION

This research does not evaluate all regulation and quasi-regulation that impacts on dog breeding. Instead it focuses primarily on the 2 State based breeding codes that currently exist NSW and Victoria, and on industry codes, specifically the ANKC and State and Territory canine association codes of conduct, ethics and breeding. It does this using the two measures of effectiveness as set out in Table 19 above.

### 1. Does it meet its intended objectives?

For regulation to be effective it needs to meet its intended objective. The fundamental question is what is the actual purpose or role of the regulation that regulates dog breeders? In Chapter 7 stakeholders were asked to provide their opinions on the role, purpose and objective of regulation in dog breeding. Four major roles emerged, and these have been summarised in Table 17 in that Chapter:

- To set standards of care for dogs, both breeding stock and puppies produced
- To eliminate irresponsible breeding practices
- To ensure puppies are as healthy as possible by reducing genetic diseases
- To reduce dog overpopulation

#### *1.1 Breeder Accountability*

##### Introduction

Chapter 7 findings make it clear that stakeholders have a strong desire to ensure that breeders care for their dogs, do not engage in irresponsible breeding practices, and that they take reasonable steps to produce healthy puppies. The first 3 major roles of regulation are all aspects of breeder accountability.

As outlined in Chapter 4, we can use models of regulation and regulatory techniques that come from the business world to inform the canine health debate, even though many dog owners breed as a hobby and do not feel that they operate within the business world. Breeders are free to pursue whatever objectives they wish when they breed. It is the role of the regulatory



framework to ensure that they pursue these objectives within a framework that is socially acceptable to the community.

Whilst there is no regulatory theory that directly considers how to make dog breeders more accountable, there is useful regulatory theory literature from other industries that provides an in-depth examination of regulatory and non-regulatory techniques that have the highest chance of making regulatees, such as breeders, accountable. There is literature that looks at the role of regulation in other animal industries including the work by Parker and others. This literature looks at the role of labelling and information disclosures in supporting consumers in making informed buying decisions. There is literature (again by Parker) that reports that regulatees do unethical things for a number of reasons.<sup>2</sup> Regulatees may act unethically because they focus on short-term gain over longer term considerations; they may be uncertain of what is ethically correct; they may not feel connected to the ultimate outcome; or they may take on board what others suggest is the right thing to do because they are deceived or to avoid conflict or expense.<sup>3</sup>

As was seen in Chapter 3, much of this can be seen in dog breeding. The vast majority of Australian dog breeders are free to pursue their own personal interests as hobby breeders. They are free to set their own objectives for breeding and to pursue short term profit over longer term considerations. Breeders may be unclear on what type of breeding practices are acceptable. This is particularly true if they are not a member of a breeding association. Even if breeders are members of industry associations they may not feel connected to it and may feel that the association plays no role in ensuring that they are breeding in a way that ensures high standards of welfare for their dogs and the puppies they are producing. Effectively enforced regulation will make breeders aware that they are accountable for their breeder practices, irrespective of their motives for breeding. Without this awareness, some breeders may well

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<sup>2</sup> Christine Parker, *The Open Corporation* (Cambridge University Press, 2002) 3 & 33, Christine Parker, 'Voting with Your Fork? Industrial Free-Range Eggs and the Regulatory Construction of Consumer Choice' (2013) 649(September) *The Annals* 52.

<sup>3</sup> Zoe Rodgers, *Free Reign Over Free Range? The Regulation of Free Range Eggs in New Zealand* (Honours Thesis) Victorian University of Wellington, 2015)  
<http://researcharchive.vuw.ac.nz/bitstream/handle/10063/5104/paper.pdf?sequence=1>.

employ breeding practices that do not offer the best outcomes for breeding dogs and puppies and for those who acquire dogs from them. In situations where money is a motivating factor and where there is little chance of breaches of rules being seen and enforced, there is a real need for the establishment of mechanisms that enhance accountability.<sup>4</sup> This research explores a number of regulatory and non-regulatory techniques that may enhance breeder accountability.

To consider if the regulation in dog breeding is meeting its intended objectives, the data that has been collected around breeder accountability is now examined.

#### Interviews with Stakeholders (Data Set 1)

Interview participants indicated that it was their belief that breeder accountability was a major role of regulation but that they believed that a major issue, as set out in Part II of Chapter 6 was the lack of accountability and transparency in breeding practices.

#### Dog Owner Survey (Data Set 4)

Dog owners were asked if any laws around dog ownership and dog management had ever been enforced against them or by them. Analysis of the data collected in response to this question has been conducted and Table 14 in Chapter 7. This reveals that only 7.5% of dog owners (191 out of the 2536 owners that answered this question) have been impacted in any way by regulation around their ownership or management of their most recently acquired dog. One hundred and ninety-two dog owners took up the opportunity to expand on the type of regulation that had been enforced against them or by them. An analysis of these comments reveals that only one dog owner had used dog regulation to make a breeder accountable, and this was not around health or dog welfare but instead was an issue in relation to pedigree and registration papers for a dog.

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<sup>4</sup> Jeffrey K Randall, 'Improving compliance in US federal fisheries: An enforcement agency perspective' (2004) 35(4) *Ocean Development and International Law* 287, 293

### Dog Breeder Survey (Data Set 5)

Dog breeders were asked if they believed that the current regulation of dog breeding is effective. As can be seen in Table 20 below, 83% of breeders do not believe that the current regulation is effective.

*Table 20 - Dog Breeder Survey Question 38*

<b>Q 38 - Do you believe the current regulation of dog breeding in Australia is effective?</b>		
<b>Response</b>	<b>Number of responses</b>	<b>%</b>
No	179	83.26
Yes	36	16.74
<b>Total Answers</b>	<b>215</b>	<b>100.00</b>

One hundred and seventeen breeder participants provided comments to expand upon their 'yes' or 'no' answer to question 38. A search using the key words of 'account', 'breeder' and 'regulation' brought up 32 comments. Almost 30% centred on the fact that registered breeders were accountable by virtue of their membership of the ANKC and the State and Territory Canine Associations, but that other breeders (such as puppy farm breeders, backyard breeders, large scale commercial breeders and breeders of cross breeds) are not made accountable. By way of illustration, three of the comments are provided here:

- 1. Regulation targets the wrong people. Breeders of animals registered as pure breeds are not the problem. It is the unregulated backyard breeder who puppy farms that fills the shelters with animals. They are assisted by the designer dog group that call X breeds anything they want and can say anything they care about animals of unknown health prospects and unknown temperaments.*
- 2. Pure breed breeders are very regulated however the cross breeds are not. Pure breed breeders put their hands in their pocket to do testing for problems in the breed, but crossbred breeders do not i.e. Poodles & cocker spaniels both suffer from PRA (night blindness) which can now be tested for with DNA so breeders know the best lines to use. Crossbred breeders don't have to do a thing to help protect the public from such problems & can be selling pups that can go blind. They should be regulated & made to do testing.*
- 3. Those who belong to governing bodies must abide by strict codes of ethics - which I am happy with. These do not apply to back yard and 'commercial' breeders.*

## 1.2 Dog Overpopulation

### Introduction

Researchers such as Rohlf and Marston have considered the causes of dog overpopulation.<sup>5</sup> Their research concludes that there is dog overpopulation in Australia, but the extent of the problem is hard to quantify as there is no consistent data at national level.<sup>6</sup>

There is little scholarly literature on the contribution that over breeding by either hobby or commercial breeders makes to the number of relinquished or abandoned dogs. This research provides data in relation to the stakeholders' views on the extent of overpopulation and the types of breeding that contributes to it. There are regulatory and non-regulatory measures such as the implementation of a licensing system that could assist in reducing dog overpopulation should it be established that breeding by regulated/licensed breeders contributes to dog overpopulation and provided regulators know where to target measures aimed at reducing dog overpopulation.

### Interview with Stakeholders (Data Set 1)

Of the 11 interview participants, only one indicated that there was a role for regulation in reducing dog overpopulation.

### Library and Archival Industry Data (Data Set 2)

Three articles were found in the library and archival material that argued that registered dog breeders do not contribute substantially to dog overpopulation, or to the number of dogs that populate animal shelters or pounds. This material asserts that registered ANKC dog breeders, who are subject to an industry code aimed at promoting responsible breeding, contribute less than 17% of puppies being produced each year and that of all 33 000 registered breeders that bred a litter in 2014 only 79 or 0.02% of breeders registered more than 10 litters, with 54%

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<sup>5</sup> Vanessa Ilse Rohlf, *Beliefs Underlying Dog Owner's Management Practices* (Doctor of Philosophy Thesis, PhD Thesis, Monash University 2013)

<sup>6</sup> Linda Marston et al, 'Review of Strategies for Effectively Managing Unwanted Dogs and Cats in Queensland - A Report to the Department of Primary Industries and Fisheries, Queensland ' (Monash University 2008 2008) <[http://www.daff.qld.gov.au/\\_\\_data/assets/pdf\\_file/0005/50873/L-Marsden-MUCD-Report.pdf](http://www.daff.qld.gov.au/__data/assets/pdf_file/0005/50873/L-Marsden-MUCD-Report.pdf)>, 8.

breeding only one litter in that year.<sup>7</sup> This material asserts that as such ANKC breeders are not breeding in large numbers and that they are not contributing to dog overpopulation.

#### Dog Owner Survey (Data Set 4)

Dog owners were asked to provide feedback to an open-ended question on the role of regulation. Of the 425 written comments, only one contained a reference to the key word 'population'. This comment suggested that there was a need to mandate de-sexing to reduce overpopulation of both dogs and cats:

*Mandatory de-sexing of all dogs and cats sold will do more for the current overpopulation than regulation of dog breeding.*

To ensure that synonyms of 'overpopulation' were captured the comments were again searched for the word 'unwanted'. Seven comments were collected around what caused 'unwanted' dogs. Of these 5 indicated a belief it was caused by breeders in some way, either registered or backyard or commercial breeder. One dog owner stated:

*I believe that there shouldn't be backyard breeding or puppy farms and that there should be standards and registration for people to breed. There are too many unwanted "pets" in Australia. As a vet nurse, I've had to hold too many dogs (and cats) being euthanised because they are no longer wanted or have been bred backyard and have congenital issues.*

#### Dog Breeder Survey (Data Set 5)

Dog breeders were asked to reflect on the effectiveness of current dog breeding regulation. Ten of the 117 breeder survey comments indicated that, due to codes of ethics in breeding and their own breeding practices they only bred in small numbers. They were prepared to take back any dogs that they bred should they no longer be wanted so they always had a home and did not end up in animal shelters or local pounds. One of these breeders raised concerns around regulations and lack of enforcement that allowed puppy farms to exist:

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<sup>7</sup> Dogs Victoria, *Advantages of Purebred Dogs* (2015)

<<http://www.dogsvictoria.org.au/AboutUs/Polycystatements.aspx>> and Dogs NSW, 'A Forensic View of Puppy Breeding in Australia ' (Dogs NSW, 2015)

<[http://www.dogsnsw.org.au/images/stories/PDFS/A\\_Forensic\\_View\\_of\\_Puppy\\_Breeding\\_in\\_Australiav3.pdf](http://www.dogsnsw.org.au/images/stories/PDFS/A_Forensic_View_of_Puppy_Breeding_in_Australiav3.pdf)> and Dogs SA, 'A Forensic View of Puppy Breeding in Australia ' (May 2015)

*Governments allow puppy farms - mass production of mutts that fill our Council Pounds (paid for by the ratepayers) and the fodder for blood-sucking business of Animal Welfare charities who rattle tins for donations whilst holding million-dollar investments and share portfolios. Make all Breeders responsible for the animals they breed for the life of the dog. All ANKC registered pups are micro-chipped. Retain the Breeders details and make the Breeder accountable for any dog that ends up a stray. Use the laws that are currently in place and prosecute the backyarders who do not chip the puppies they breed. Would eliminate the need for Council pounds. I know where EVERY pup is that I have bred since 1986. Doubt that any of the Oodle breeders can say the same.*

This is an interesting comment. A suggestion that the laws be enforced around microchipping. This however posed the question, if a puppy is not microchipped and found with health issues, how can it be tracked back to the breeder? For registered breeders the answer may be to prevent the sale of puppies without details of microchipping number being included. These details could be included in mandatory puppy contracts. The introduction of these are considered in more detail in Part III of Chapter 9.

## 2. Is Regulation Understood and are Stakeholders Aware of it?

### 2.1 Awareness of Regulation

Methods of evaluating the effectiveness of regulation were considered in Chapter 4.<sup>8</sup> For regulation to be effective it must be understood and meet community and stakeholder expectations.<sup>9</sup> In dog breeding there are a number of stakeholders, and each has their own view on: the issues that exist; the role that regulation should play; and on the effectiveness of the

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<sup>8</sup> Robert Baldwin and Martin Cave, *Understanding Regulation: Theory, Strategy and Practice* (Oxford University Press 1999), Robert Baldwin, Martin Cave and Martin Lodge, *Understanding Regulation: Theory, Strategy, and Practice* (Oxford University Press, 2nd ed, 2012), Colin Scott, 'Speaking Softly Without Big Sticks: Meta-Regulation and Public Sector Audit ' (2003) 25(3) *Law & Policy* 203, Colin Scott, 'Regulation in the Age of Governance: the Rise of the Post Regulatory-State' in Jacint Jordana and David Levi-Faur (eds), *The Politics of Regulation* (Edward Elgar Publishing 2004) 145, John Braithwaite, 'Regulating Nursing Homes: The Challenge of Regulating Care for Older People in Australia ' (2001) 323 *British Medical Journal* 443, John Braithwaite, 'Rewards and Regulation' (2002) 29(1) *Journal of Law and Society* 12, John Braithwaite, 'The Essence of Responsive Regulation. (Fasken Lecture)' (2011) 44(3) *University of British Columbia Law Review* 475

<sup>9</sup> Christine Parker, 'Compliance Professionalism and Regulatory Community: The Australian Trade Practices Regime' (1999) 26(2) *Journal of Law and Society* 215, 216 and Christine Parker, 'Meta-Regulation: Legal Accountability for Corporate Social Responsibility?' in Doreen McBarnet, Aurora Voiculescu and Tom Campbell (eds), *The New Corporate Accountability: Corporate Social Responsibility and the Law* (2007) , 2.

current regulatory regime in addressing the issues. Parker et al argue that regulation needs to be responsive, that is, be able to deliver justice beyond the court room. For this to be achieved, regulation must be understandable and those that are regulated by it need to be aware of it. This research investigates the awareness of stakeholders of regulation that assists dog owners and that regulates the activities of dog breeders.

#### **Dog Owner Survey (Data Set 4)**

In order to determine the general awareness of dog owners of their rights and obligations under the current regulatory framework, they were asked in question 24 if they were aware of their rights and obligations as dog owners.

Table 21 sets out their responses to this question.

*Table 21 - Dog Owner Survey Question 24*

<b>Q 24 - Are you aware of your rights and obligations as a dog owner?</b>		
<b>Aware of rights and obligations</b>	<b>No of responses</b>	<b>%</b>
Fully aware	1404	55.01
Somewhat aware	853	33.42
Not very aware	210	8.23
Not at all aware	51	2.00
Other	34	1.34
<b>Total Answers</b>	<b>2552</b>	<b>100</b>

This indicates that the vast majority of dog owners believe that they are aware of their rights and obligations as dog owners. Fifty five percent of all owners believe they are fully aware of their rights and obligations and 88% believe they are either fully or somewhat aware.

Owners were asked to list any rights and obligations that they have faced as dog owners from canine associations, local councils or state or federal regulatory bodies. Close to 50% (1251 participants) provided an answer. These answers were manually coded by using the approach and coding rules as set out in Section 3 of Part IV of Chapter 5. The key words that were

developed under of each of the regulatory components as set out in Figure 1 in Section 3 of Part 1 of Chapter 1 were:

**Dog Ownership:**

Consumer	Contract	Owner*	Property* <sup>10</sup>
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**Dog Management:**

Control	Council	Danger	Licence
Manage	Microchip	Register	Specific

**Dog Welfare:**

Care	Food	Health	Shelter
Veterinary	Water	Welfare	

**Dog Breeding and Selling (Including ANKC pursuits):**

ANKC	Association	Breeder/Breeding	Code
Purchase	Sale		

As the comments were searched using these 25 key words, it became apparent that the words ‘owner’ and ‘property’ were almost exclusively used by dog owner survey participants in the context of their obligations as ‘owners’ to be responsible for the management and control of their dogs and their obligations to keep their dogs contained effectively on their ‘property’.

Table 22 below provides a breakdown of awareness of rights and obligations as dog owners and comments made by participants. This is done by using the information that comes from both questions 24 and 25 and stratifying them and grouping them as being comments that relate to either of the four components of the regulatory framework:

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<sup>10</sup> Both the words ‘owner’ and ‘property’ have been placed under dog ownership regulation. As each comment was read it became apparent that their words were used in the context of owner’s obligations to be responsible for the management and control of their dogs and to keep their dog contained effectively on their property. No comments were found in the context of contractual disputes or in relation to how the law considers a dog to be the property of its owner.



Dog ownership	Dog management	Dog welfare	Dog breeding and selling
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Table 22 - Dog Owner Survey – Questions 24 and 25 - Dog Owner Awareness of Dog Regulation

Q 24 - Are you aware of your rights and obligations as a dog owner?									
Q 25 - If you are aware of any rights and obligations that dog owners' have/face in Australia (from canine associations, local councils, state and federal regulatory), please list them here.									
					O	M	W	B	X
Aware of rights and obligations	No of responses to Q24	% of sample	Number of comments Made in Response to Q25	% of comments from each group	Number of comments that Identified Dog Ownership	Number of comments that identified Dog Management (including specific breed legislation)	No of comments that Identified Dog Welfare	No of comments that Identified Breeding and Selling and ANKC regulation	No of comments that Identified Other Dog Regulation
Fully aware	1404	55.01	884	70.66	1	659	553	57	5
Somewhat aware	853	33.42	358	28.62		267	252	15	
Not very aware	210	8.23	6	0.01		3	3		
Not at all aware	51	2.00	1	Less than 0.01		1			
Other	34	1.34	2	Less than 0.01			2		
	Total responses 2552		Total Comments 1251		Total Comments 1	Total Comments 930	Total Comments 812	Total Comments 72	Total Comments 5
Total components identified in the comments = 1820									

Some of the 1251 comments included mention of rights and obligations in more than one of the components of the regulatory framework. As a result, the 1251 comments provided 1820 responses across the four components of the regulatory framework.

It is interesting that more comments were made in relation to dog management obligations than in relation to dog welfare, with 930 comments around dog management regulations compared with 812 that spoke on dog welfare or anti cruelty regulation. This indicates that management regulation impacts more on owners than regulation aimed at ensuring effective animal welfare.

Also, of interest was that, although owners were asked about their rights and obligations as dog owners and close to 50% of them perceived that they were fully aware of their rights and obligations, none mentioned any rights under contract law and only one mentioned consumer law rights:

*Keeping dogs in a clean and safe environment. Escape proof yards. Local Registration/observance of anti-barking laws/ not permitted to rush the fence to intimidate passers-by. Dog NSW regulations and codes of conduct. NSW Companion Animals Act. Consumer Laws. I believe that temperament is a major consideration in a breeding program. (Fully Aware)*

One owner commented on their thoughts around the law classifying dogs as property:

*I dispute that our dogs are called property and that it is used against our dogs, being that council is inflexible with the grey areas surrounding this.*

Despite the fact that there was only one comment made in relation to contract law or consumer law, a number of participants gave comprehensive answers demonstrating their knowledge of their obligations to manage their dogs and ensure their welfare. Two sample comments are provided below, one from a participant who ranked themselves as fully aware of their rights and obligations and one from a participant who ranked themselves as somewhat aware:

*To provide care in form of nutritious food / shelter with protection from extremes of weather and size appropriate yard / vaccinations and relevant and regular medical attention / mental stimulation exercise, play and interaction.....must be registered with local council after 6/12 of age; must be on a leash in specified areas or 'under control'; can't be left in vehicles in hot weather...some states specify vaccination against specific diseases e.g. hydatids...dog tags must be worn at all times. Aggressive dogs can be impounded and if classed a risk then put down.... this may lead to charges being laid, police and court involvement .... barking dogs can be subject to interventions by local council. (Fully Aware)*

*Secure housing/fencing. To be on a lead in public areas unless specified as an off-leash area. May or may not be allowed in food service areas at the discretion of the business manager. Cannot bark excessively Cannot behave aggressively towards people or other animals. Must have poo bags when out in public Need local council permission for three/more dogs on a property Provision of food and water, plus shelter from bad weather. (Somewhat Aware)*

There were 72 comments that referred to at least one of the following key words: sale, purchase, ANKC, association, breeder/ breeding or code. A number of comments referred to two or more of these key words, with the key words **code** and **association** appearing together in 15

comments. Eight participants noted that they were aware of regulation requiring puppies or dogs to be micro-chipped before **sale**. Three participants noted that the codes of responsible breeding established by the different State and Territory canine associations require breeders to provide **purchasers** with assistance and specific advice and paperwork. Twenty-eight participants confirmed obligations that owners of registered dogs have in accordance with regulation with the **ANKC**. There were a further 19 comments that referred to the regulations enforced by the canine **associations**. Finally, in relation to the term **code**, 43 participants mentioned regulation by code. Of these, 33 referred to the canine association codes and the other 10 referred to either the Victorian or NSW codes for breeding of dogs.

One of the most extensive answers provided:

*Is this a test? I know about my rights and responsibilities, but I don't have enough time to list them all.*

*Maintain welfare of dogs in their control Register according to local bylaws Control dogs outside of own property according to local regulations and with consideration for other dogs and people Safely restrain dogs who may present a danger to anyone or anything Restrain dogs appropriately when travelling Microchip all puppies prior to sale (depending on state) Not permit a dog to attack, injure or harass people, dogs or other animals Comply with on leash regulations where they exist Comply with state breeding legislation where it exists If a member of ANKC organisations, multiple obligations There are too many to list. Refer SA Dog & Cat Management Act & local Council by-laws Registration with Local Council. De-sexing non-breeding dogs. Microchip. Training with approved training facility. Access to off-lead secure dog parks. Not allowing dogs to bark excessively. Not allowing dogs to cause nuisance. Not allow dogs to roam freely. Provide shelter. Provide safe secured fencing. Provide food. Provide medical requirements. Keep dog on lead in public places. No cross breeding allowed when a member of a canine association. Dogs on back of utes must be tethered in a safe manner. Some state required dogs to wear a harness when in motor vehicle. Dogs must be registered. Number of dogs allowed per household Register dog with council, microchip it, ensure it is looked after, ensure that it isn't a menace to public via barking, aggression etc.*

Given that close to half of the dog owners that undertook the survey provided some comments in relation to their rights and obligations as dog owners, there seems to be a fair level of understanding of dog management and dog welfare regulation. Dog owners are less aware of their rights under breeding codes, with only 50 comments making mention of either the State or industry breeding codes. Less known again are owners' rights as the **consumer** of dogs, their

rights to use contract or consumer law to enforce rights and obligations around the purchase or acquisition of their dogs.

#### Dog Breeder Survey (Data Set 5)

Dog breeders were asked to provide an answer on their awareness of their rights and obligations as breeders. Table 23 records the results.

*Table 23 - Dog Breeder Survey Question 37*

Q 37 - Are you aware of your rights and obligations as a dog breeder?		
Degree of Awareness	Number of responses	%
Fully aware	155	70.46
Somewhat aware	58	26.36
Not very aware	5	2.27
Not at all aware	2	0.91
<b>Total Answers</b>	<b>220</b>	<b>100</b>

This shows that the vast majority of breeders (96.82%) believe that they are either fully or somewhat aware of their obligations as breeders.

## 2.2 Awareness of Codes

#### Interviews with Stakeholders (Data Set 1)

The interview participants were asked how familiar they were with the current regulatory framework that regulates dog breeding. All 11 indicated that they were familiar with it. Of the 11 stakeholders, five resided in Victoria, three in Tasmania and one each in New South Wales, Queensland and South Australia. Four specifically referred to the state breeding codes. Two of the Victorian interview participants both provided comments to elaborate on the effectiveness of codes. One said:

*I tried to argue that when we did the code of practice review that if puppy farmers choose to breed X amount of different breeds then they should be experts in those breeds and recognise what it is those dogs need. I was told that that was ridiculous because there are just too many dog breeds to write that into a code of practice and I said well look break them down like Dogs Victoria has, think they have toy dogs, working dogs, seven different groups of dogs. I said look at those groups of dogs that Dogs Victoria has and try and get some behavioural and enrichment plans enforceable on puppy farms around those seven different groups because to me it's just awful to see Beagles you know, to think that they*

*are hunting hounds and they do need that specific, you know I have seen pets, Beagles and they are just nose to the ground, they follow that scent, the pack all follows. So when I go into a puppy farm and see all these pathetic Beagles it breaks my heart. (W2)*

Another confirmed that that it was their opinion that regulation such as codes can be ineffective because codes may not be clearly written:

*.... to me that is the trouble with a lot of regulations and codes in particular is that they are not clear. You either make them so they are clear cut or just get rid of them. (I2)*

### **Dog Breeder Survey (Data Set 5)**

One hundred and seventy breeders provided comments in response to the question around the effectiveness of the regulation of dog breeding. Of these, 7 made comments around codes, with three making statements around the effectiveness of state breeding codes, and 3 commenting on the use and effectiveness of the ANKC and State and Territory code of ethics in breeding, and one looking at both type of codes.

Only one comment indicated that there was a lack of stakeholder expectation specifically with the code:

*There is a lot of bias and hypocrisy in how dog breeding is regulated. There are also wrong claims made about breeds by people who should know better. More regulation does not guarantee workable or relevant regulation. Some of the provisions of the Companion Animal Code of Welfare horrify me e.g. my dogs should be in yards 3.5m<sup>2</sup> and should be allowed to exercise in a yard a minimum 20 mins per day. I find the idea that regulators consider this acceptable across all dogs the size of mine horrifying. More regulation could mean stupid regulation that makes an industry that is already hard work and requires a lot of sacrifice impossible for hobby breeders to exist in.*

Other breeders were not so much critical of codes and their wording, but more of their use and enforcement:

- 1. There are far too many puppy farms that no one is doing anything about. The Companion Animals Act & associated Canine Bodies Regulations and Codes of Ethics only apply to the honest people. I being a Registered Breeder abide by Dogs NSW Rules & Regulations & Code of Ethics & am regulated in the amount of litters that I breed, how my dogs are housed etc. and right down the road from me is a "puppy farmer" who's breeding bitches live in appalling sheds, produce litter after litter after litter with no consequence on this person as they are "unregulated"..*

2. *Back yard breeders are not regulated in any way apart from a Code of Practice (which needs to be enforced) that most of them would not be even aware of.*
3. *States vary in regard to dog welfare issues, so it is not mandatory in some states to adhere to a legislated code of practice, and some states it is.... only Victoria at this stage. All states should adopt a single code of practice to protect the welfare of dogs equally and effectively from inhumane and illegal breeding practices.*

There were a number of comments in relation to the ANKC and State breeding codes:

1. *Those who belong to governing bodies must abide by strict codes of ethics - which I am happy with. These do not apply to back yard and "commercial" breeders."*
2. *And no, some commercial breeders do not have the code of ethics or regulations that a hobby breeder with ANKC follow.*
3. *For ANKC breeders there are code of ethics that need to be enforced. For commercial breeders (puppy farms) the laws need an overhaul.*

### 3. Summary of Major Findings

This part of the Chapter considered the research findings that evaluate the effectiveness of the current regulation by considering: if it meets its intended objectives; if it is understandable; and if stakeholders have a good awareness of it. There was support that regulation does make registered pure breed dog breeders more accountable but little evidence that regulation reduces over population. A number of owners and breeders demonstrated an awareness of the codes that exist, but minimal feedback was received around enforcement of rights provided under either state based or industry codes. Dog owners generally perceive that they are fairly aware of the regulation around dog ownership and management and breeders perceive that they are fairly aware of their legal obligations as breeders.

## PART III. EVALUATING EFFECTIVENESS OF REGULATORY SPACE

Chapter 4 considered the ways in which the existing regulatory space in dog breeding could be assessed. The different measures that were settled on are repeated here:

1. Are regulators accountable?
2. Are codes appropriately enforced and monitored?

As confirmed in the introduction of this Chapter, this research does not seek to evaluate the effectiveness of all regulatory actors. This research examines the accountability of the ANKC (and

the State and Territory canine associations), to dog owners and dog breeders, including the ANKC's ability to: inspect; punish wrongdoers; enforce and monitor breeding codes.<sup>11</sup> The focus of this research is the breeding codes that exist at State and industry level, the involvement and awareness that both breeders and owners have in relation to those codes, and their perceptions around the way that these codes regulate breeding and whether such codes create breeder accountability and on the accountability of regulators in a broader sense.

## 1. Role of the ANKC in Creating Breeder Accountability

### 1.1 Interview with Stakeholders (Data Set 1)

Interview participants were asked a set of questions in relation to the role and effectiveness of the ANKC. All stakeholders were aware that the State and Territory canine associations play a limited role in monitoring their members, with no role in inspecting premises.

Another industry participant noted that the ANKC and its State and Territory canine association members do not have legal standing or power to enforce or inspect premises of their registered breeder members. At best they can impose a ban on membership or place restrictions on breeding rights. This industry member confirmed that even in doing this the record keeping of the State association was such that breaches of codes were not effectively recorded, making even the penalty of restricting membership not as effective as it could be if effective record keeping was in place:

*When you go to a Council meeting they don't take all the minutes going back 20 odd years. They rely on peoples, in my case my knowledge. I had been there so long I knew what had happened. In one case a person had so many dogs that he even had the dead ones, he hadn't had time to bury the ones in his freezer and then when the RSPCA inspected the place a partly decomposed dog was in one of the runs. It had decomposed partly into the ground he hadn't even noticed it so he didn't inspect his dogs very often and the other fellow owned a boarding kennel, and someone boarded a purebred dog there and he would put it to anything he had in season and sell the puppies and make money. We caught him out, he has tried a couple of times to get back in, and it's not going to happen.*

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<sup>11</sup> The ANKC is the only regulator of pure breeding dogs in Australia and is recognised internationally as the body that regulates the breeding of pure breed dogs.



One industry interview participant suggested that the ANKC, which currently does not have the power or resources to effectively monitor or inspect the premises of registered breeders, that they be given the power under state legislation to enter and inspect the premises of breeder's properties. When asked to detail how such a thing could be made possible given resourcing constraints he suggested:

*It shouldn't be that onerous. Most of what would have to be done could be done on a voluntary basis. People could be trained up to look at premises .... I think it would be effective if you have a lot of people that would have the capability to do it and a lot of people that would have the time to do it. (I1)*

### **1.2 Library and Archival Industry Data (Data Set 2)**

A number of concepts and strategies that have been considered and/or adopted at either national or state level, demonstrating willingness for the ANKC and the State and Territory canine associations to expand their roles in dog breeding, emerged from the material that was collected from the library and archival industry data search. These touch upon the increasing awareness of the ANKC and the State and Territory canine associations of a need for them to be a voice for dog owners and to play a role in the establishment of breeder accountability.

Back in 1989 it was recognised by representatives of pure breed dog breeding that there was a role for the State and Territory canine associations to spread the word about the positive impacts that a dog can have in the lives of humans, as providers of affection, therapy, warmth and humanity. There was the call to spread the word and educate people as widely as possible about the benefits of dog ownership.<sup>12</sup> The ANKC has taken steps to educate the public about the benefits of ownership of pure breed dogs. A number of national canine associations in other jurisdictions are taking steps to educate the public about pure breed dog ownership. An example is the development of National Purebred Dog Day that was established in the USA in 2015.<sup>13</sup>

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<sup>12</sup> Frances Sefton, 'What of the Next 200 Years of Dogs in Australia?', *National Dog* (Menangle Park), 1989, 2.

<sup>13</sup> American Kennel Club, *AKC News - National Purebred Dog Day* (29 April 2015) <<http://www.akc.org/news/national-purebred-dog-day/>>; American Kennel Club, *AKC News - National Purebred Dog Day* (29 April 2015) <<http://www.akc.org/news/national-purebred-dog-day/>> and American Kennel Club, *AKC*

In 2007 Dogs Victoria began considering ways to ensure their ongoing viability. One initiative they adopted was to welcome as associate members the owners of cross breed dogs in an attempt to have Dogs Victoria become an organisation representing all dog owners and thus to enable it to grow in influence.<sup>14</sup>

Two articles were found that confirmed a push by Dogs NSW towards improving accountability of breeder members for dogs being produced by them. An article appeared in the 2016 NSW Gazette indicates that Dogs NSW had introduced a more complex breeder's prefix program, which involves an online course requiring a supervised examination and a subsequent inspection of the applicant's proposed breeding premises.<sup>15</sup>

An investigation of the committee structures adopted by a number of the State and Territory canine associations (as revealed in the most recent gazettes), reveals the existence of public and government relation committees. Dogs NSW for example has a media and government legislation committee and a public relations committee.<sup>16</sup> This shows that the association understands the need to engage effectively with the community, and with media and government bodies, when it comes to regulation that impacts on dog sport and dog breeding.

### *1.3 State and Territory Canine Association Survey (Data Set 3)*

This was intended to provide insight into the perceptions that the State or Territory canine associations hold around their role in relation to creating breeder accountability. The survey asked them questions around how they deal with complaints from members of the public, their role in enforcing their own codes of ethics and responsible breeding and how they discipline members for breaches of the codes

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*Celebrates National Purebred Dog Day (2017)* <<http://www.akc.org/content/news/articles/akc-celebrates-national-purebred-dog-day/>>.

<sup>14</sup> Celeste Bryson, 'VCA Embraces Crossbreeds to Increase Membership', *Dog News Australia* (Hoxton Park ), 2007

<sup>15</sup> 'From the Office - Breeders Prefix Program' (Dogs NSW 2016) and Dogs NSW, *Become a Breeder* (2016) <<http://www.dogsnsw.org.au/breeding/how-to-become-a-breeder.html>>

<sup>16</sup> Dogs NSW, *Committees* (2017) <<http://www.dogsnsw.org.au/members/member-support/committees.html>>

The returned survey indicated that the association reviewed and updated its regulation in relation to breeding approximately twice each year. Such changes are advertised in the Association's Gazette, so members are aware of the regulations prior to them taking effect. Although only one survey was returned it was useful in providing a number of insights about the practices of one of the State or Territory canine associations.

The survey revealed that over the 12 months preceding completion of the survey the association had received less than ten complaints against members, with only two being complaints by members of the public concerning breeding practices of members. This State canine association currently has a panel of investigators, a disputes and discipline committee and a regulations committee that makes recommendations to the State/Territory council to ensure that they are complying with ANKC regulations and requirements.

This association confirmed that it did not at that point in time engage in site inspections of members' premises. It also revealed that it does not currently have formal policies or steps in place to monitor compliance with its own objects, but believes it is meeting these objects because:

*The fact that the organisation continues to exist indicates to me that some of the objects are being met.*

#### **1.4 Dog Owner Survey (Data Set 4)**

Dog owners were asked a number of questions in relation to their membership (or otherwise) of the ANKC. They were also asked to provide their view on whether commercial dog breeding should be permitted in Australia.

The questions that were asked were:

- *Q 18 - Are you a current member of any of the State or Territory Canine Associations?*
- *Q 19 - If you are a member of any of the State or Territory Canine Associations how much involvement do you have with this organisation?*
- *Q 20 - Is there anything more that you believe your State or Territory Canine Association should be doing in relation to the breeding of dogs in Australia?*

➤ Q 21 - Do you believe there should be commercial dog breeding in Australia?

Of the total sample, 21% of participants noted that they were a member of at least one State or Territory canine association. Of these 588 members of the ANKC, 53% confirmed in answering question 19 that they were actively involved with the association and attended dog events such as conformation shows, obedience or agility events.

Three hundred and seventy participants provided comments in response to question 20. These comments were coded using the 35 key words as set out in Chapter 5. All comments that raised one or more of these key words was read carefully. Those that included the word 'accountability' and directly explained what the participant thought that the ANKC or State or Territory canine association should be doing to in relation to dog breeding were reviewed. Table 24 below lists the accountability issues identified through this process.

*Table 24 - Dog Owner Survey Question 20 - Summary of Accountability Issues Identified*

Number	Key words	Accountability issue identified	No. of comments referring to key word <sup>17</sup>
1	Accountability Code	A lack of ability by the ANKC and its State and Territory members to police and inspect their own members to ensure that they are breeding in accordance with the codes. A need to push for greater breeder accountability	13
2	Education <sup>18</sup>	A need to play a bigger role in educating members of the public on responsible pet ownership, the benefits of owning pure breed registered dogs and a need to educate member breeders on best practice breeding	44
3	Enforcement License Regulation	A need to keep codes and regulation up to date and to enforce the codes of ethics in terms of breeding practices, selling practices and litter numbers for breeding animals and to advocate that only licensed breeders are able to breed and sell puppies	35

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<sup>17</sup> All comments that contained one of the 35 key words were read. Those that contained one or more and that directly outlined the participants views on what the ANKC or the state or territory body should be doing in relation to dog breeding in Australia have been considered and used to identify the accountability issues set out in this table.

<sup>18</sup> The word education was not one of the initial key words but from reading all the comments the word kept on appearing and so a search was made.

4	<b>Genetic Health</b>	A need to monitor breeding practices to ensure the health of all dogs owned by members and to mandate genetic testing of breeding dogs.	<b>87</b>
5	<b>Sale/Sell/Sold</b>	A need to advocate for stricter regulation around where puppies can be sold and a need to enforce tight controls on where and how member breeders advertise and sell puppies	<b>62</b>
6	<b>Transparency</b>	A lack of transparency of decision-making processes within the ANKC and its State and Territory members.	<b>3</b>
7	<b>Advocacy Welfare</b>	A need to be a leader in discussions around dog health and welfare with community and other stakeholders	<b>17</b>
8	<b>Role</b>	A need for the ANKC to be a more effective governing body	<b>3</b>

Dog owners identified eight issues with the accountability of the ANKC and its State and Territory members as set out in Table 24 above. Essentially those dog owners who are also members of one of the State or Territory canine associations feel that that their member bodies are not accountable in that they fail to enforce regulation, that they are not transparent as an organisation and that they need to play a larger role as a stakeholder for members within the community in terms of educating the public about the value of owning a registered pure breed dog. They also feel that the ANKC and State and Territory canine associations need to be more accountable as a voice for dogs in terms of dog health and welfare.

As the comments made in response to question 21 were being considered around enforcement and monitoring one comment made by a dog owner stood out and is relevant here:

*I would like the ANKC to be a better governing body. Anyone can become a registered breeder in Australia and the exams are not breed specific. There is no on-going follow-up, inspection, measure of education or even compliance. The AKNC is an inert body.*

### **1.5 Dog Breeder Survey (Data Set 5)**

Ten of the breeders who provided comments in response to question 38 in the dog breeder survey (which asked if breeders believed that regulation of dog breeding was effective), provided comments that indicated that they believed that being a member of the ANKC or one of the State or Territory canine associations ensured that they were more responsible in their breeding than non-member breeders:

*Registered breeders with their state ANKC body have to abide by their controlling body's regulations and we are always transparent. Our homes are open to prospective and tightly*

*screened potential guardians in many cases prospective owners homes are checked for adequate fencing how the puppy will be housed however those who back yard breed or are puppy mills who breed for profit do not health screen research pedigrees test for Hereditary disease or give adequate socialization or care who their puppies are sold to these are the types of people who need to be regulated or closed down Registered ANKC breeders sometimes have lengthy waiting lists and only provide approximately 35% of the puppies supplied each year. The question is where do the rest come from?*

## 2. Relationship of ANKC with Other Regulatory Actors

As has been confirmed in Parts II and VII of Chapter 4, an evaluation of regulatory accountability should include a consideration of the interrelatedness of the regulatory actors.<sup>19</sup> This research seeks to understand stakeholder's perceptions on the relationship of the ANKC and its' member State and Territory associations with other regulatory actors. To do this, data from both the dog owner survey and the dog breeder survey is considered.

### Dog Owner Survey (Data Set 4)

Three hundred and seventy dog owner participants provided written comments in response to question 20 which asked them if they believed the State and Territory canine associations should be doing more in relation to the breeding of dogs. The existing key words did not draw out any understanding on participants' views on the relationship that the ANKC has or should have with other regulators, so a decision was made to search for the word 'relationship'. This word did not appear, but the words 'advocacy', 'awareness', 'education', 'regulator' and 'regulation' consistently appeared. The 19 comments that included any of these words were examined and analysed to provide an understanding of dog owners' views on the interdependence and relationship of the ANKC with the other regulatory actors. Table 25 below contains a breakdown of these comments. The majority of comments expressed views that the ANKC and the State and Territory canine associations should be doing more within the community and in interacting with other regulatory bodies.

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<sup>19</sup> Julia Black, 'Decentring Regulation: Understanding the Role of Regulation and Self-Regulation in a 'Post-Regulatory World'' (2001) 54 *Current Legal Problems* 103, 109.

Table 25 - Dog Owner Survey Question 20 - Relationship of ANKC with other Regulatory Actors

Number	Key words	View expressed on <i>Should the ANKC be doing more?</i>	Number of comments that expressed this view	Sample comments
1	Advocacy Awareness Education Regulation Regulator Relationship	YES  The ANKC needs to be do more to support other regulatory actors in some way	18	<i>They should be joining with the RSPCA and other reputable animal welfare groups (not the lunatic fringe extremists) to work to ban all puppy factories and sales of dogs in pet shops and online from unscrupulous breeders.</i>  <i>ANKC should be helping Local Government Councils to stop backyard breeders and breeders who are not registered from breeding of cross breeds on purpose and allowing them to be sold through pet shops, social media and newspapers. Also, keeping a close watch on how many pups their registered breeders are putting onto the market each year.</i>
2		NO There is no need for the ANKC to be more accountable as breeding accountability is established by State-based breeding codes	1	<i>No as we have to abide by DPI laws in VIC. This ensures the number of dogs able to be kept, conditions and if you have over 10 breeding bitches (includes over 12-week old dogs you may be running on) you need to be a business, and this brings tighter requirements.</i>

### Dog Breeder Survey (Data Set 5)

Dog owners were asked in question 38 of the dog breeder survey if they believed that the current regulation of dog breeding in Australia is effective. Owners were able to provide comments and 117 did so. These comments were considered using the same key words provided to question 20 in the dog owner survey. The words that were searched for:

Advocacy	Awareness	Education
Regulation	Regulator	Relationship

Between them the words 'regulator' and 'regulation' was referred to 64 times. These 64 comments were re-read and all comments that also included either the 'ANKC' or canine 'association' were analysed. Three comments contained both these terms and only one of them refers at all to what the ANKC should be doing in the *context of the regulatory environment*:

*Councils are left interpreting rules that have been made by government bodies who may have little understanding of the actual logistics of running an animal business. So, we have a 'local bylaws officer' who has little experience or understanding trying to tell others what to do. The current regulations are a "dog's breakfast" ..... (Excuse the pun). Micro-chipping system has benefits but could be much better. Vet practices just waft along with owners instead of being part of the process to source out where these puppies come from. ANKC is well meaning but outdated and is not working to improve the breeding and health of many breeds with specific health issues.*

### 3. Are Codes Appropriately Enforced and Monitored?

This research explores stakeholder perceptions on the ability of the ANKC and the State and Territory associations to engage in effective self-regulation, more specifically at their ability to monitor and enforce their codes.<sup>20</sup>

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<sup>20</sup> It is acknowledged that there is a bit of overlap with some of the material presented in previous Chapters. This part of this Chapter is still necessary as it consolidates the data around enforcement and monitoring in one section.



### 3.1 Interview with Stakeholders (Data Set 1)

All 11 of the interview participants were asked to express their views on the current dog breeding regulatory framework. The comments made were coded and analysed in NVivo using the methods set out in Part IV of Chapter 5. Specifically, a node was created, and all comments collected together where interview participants were asked to express their thoughts on the adequacy of the current regulatory framework. These comments were then searched using the following key words:

Accountable	Enforcement	Monitoring	Resources
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Three of the participants identified the lack of enforcement as a major issue. Two comments were made by 2 different interview participants:

1. *Enforcement and even if you have the best, the very tightest legislation it is nothing if it is not enforced. Because that is a big call it has to be a combined effort. We would like to see the police being part of the enforcement, supporting the RSPCA who obviously already do it now or who are charged to do it. Animal Welfare League NSW has an inspectorate, but other members actually don't. And I think even local government could be given a bit more resources and a bit more power in that area as well. So, I think that for it to happen and I think in a tight way in a structured way it would need to be shared otherwise it would be too much for any one of those bodies on their own.*
2. *When it gets to the nitty gritty of trying to enforce it and the burden of proof, it's like banging your head against a brick wall it really is. And the laws, you know the more I work on this the more I know that these laws are designed to protect the commercial interests of the puppy farmers – not dogs. (W2)*

When the interview transcripts were searched for the word 'code', 6 of the participants referred to either the State based or the industry code. One of the interview participants from the welfare sector suggested that the canine associations are incapable of enforcing their own codes. Another suggested it should be the canine associations that enforce codes in terms of breeding standards and genetic issues, but that their enforcement was insufficient.

1. *Canine associations lack of enforcement of their own code of ethics. The industry cannot be trusted to regulate itself because it does not have sufficient commercial independence to ensure that adequate welfare standards are maintained. We can provide details from reliable sources of disgusting practices carried out by breeders of pure breed dogs. (W1)*

2. *I believe the State canine clubs would enforce it in their areas but under the umbrella of a nationwide one, they would set the standards. Cause to get a kennel name you have to jump through hoops but once you have it do you have to keep jumping through the hoops no. It is totally relaxed and that is where the stumbling block is I think you should have to continue jumping through hoops and keep proving that the dogs that you are breeding are up to a standard that has been set. (W3)*

Four other participants referred to the State-based codes. One participant from the welfare sector noted that even with a State or Territory based breeding code supported by State legislation, puppies were being bred without permits and no action was being taken. This interview participant had just witnessed the birth of some puppies and had concerns:

*I rang the chief inspector at 7 o'clock in the morning and said look please get a vet here now as I think these puppies are going to die so they raced straight down there with a vet and council officers and there were no issues under POCTA, so no welfare or cruelty issues but numerous issues under the **code of practice** and the Domestic Animals Act, so found out that it didn't have a permit so it was operating illegally .....I found out yesterday that the council have decided to issue him with a notice to comply. So instead of shutting him down and seizing the dogs, as in a big crack down on illegal puppy farms, that (x politician) keeps talking about, there is a clause in the Domestic Animals Act they must be given a chance to comply. So even if you find the illegal ones they can't be shut down, you have to prove you have given them a chance to comply. So, he now has to apply to council for a permit, council then have to reinspect and insure he abides by the code of practice and if everything is good he is legal. (W2)*

One of the welfare interview participants said codes must be mandatory not voluntary.

*Absolutely, as much as we would love to be able to say, no we don't need it, we do absolutely need it, because people need guidelines. If there is a **code of practice** involved, then it needs to be a mandatory code of practice not just a guide. There needs to be reliable factors that both consumers can rely on but you know the animals themselves, there is a minimum standard, that doesn't have to be that minimum, you know what I mean. Currently our minimum standards in Victoria are extremely minimum but they do not need to be, but anyway so those standards need to be put into place and that is all the role of legislation. (W4)*

Two participants, one from the welfare sector and one from industry confirmed that it was a lack of resources more than the legislation itself that was an issue.

*Well I think that they are two things. There definitely has to be good strong regulation around breeding, the issue with that is that at least in NSW, Queensland and Victoria there is already good regulation in place. The issue is that there is not enough funding, or not enough **resources** available to hold **breeders accountable** to the regulation so and there are*

*lots of breeders out there that don't even know regulation exists as they might have been a breeder for, they might be the owners of a couple of dogs that they decide to breed and the next thing they know they have 20 dogs and they love what they do and they are unaware of the legislation as no one has ever told them and they are up in the country they are retired and they use to breed cattle and they don't do that anymore and now they are breeding dogs and no one has told them they are **accountable** so they have just gone ahead and done it. But you know I think if there were more resources available and if breeders were licenced then it would definitely be a much better industry, it would be a much cleaner industry than it is now. The stuff you see on television is because breeders are allowed to do what they like and they don't have to tell anyone about it. (15)*

Another of the industry interview participants suggested some regulatory capture with allowing the RSPCA to enforce:

*Absolutely. But it has to come from knowledge and experience, it cannot be influenced by crazy people by people who have got a lack of knowledge, and that is a big thing. If you go and look at their websites. You will see the things that they say they are judging breeders on. It is not fair, it's ridiculous stuff because it is not based on science, and it's based on emotion. Dogs are dogs they are not people, you can't expect everyone to have them sitting on satin cushions etc. and you have got to consider the nature of the beast. So up until now, right up to this minute when we look at how do we house dogs? That is highly influenced by how we house dogs in pounds and how we house dogs in boarding kennels. And this is a completely different realm and people haven't looked at it, you can't keep dogs 365 days a year on concrete. It's mad. (13)*

The welfare sector and industry sector participants agree that the issue with the current framework is a lack of enforcement. With respect to the codes, one welfare participant believes that the code is biased in favour of commercial breeders and one of the industry participants believes that the code is in fact in favour of dogs instead of breeders. This participant had concerns that the codes were too strict by insisting on living conditions that best suit breeders that breed small number of litters rather than suiting larger commercial breeders:

*The **code** in Victoria is quite strict, very much influenced by Vic Dogs which is crazy stuff because if it is better for a dog, and this is my argument, if you are going to tell me that this is what is required in order to keep dogs healthy then it has to be all dogs, it can't just be dogs after you own 2 or 3 or if you belong to a particular organisation. If this is best practice, then it's got to be best practice, it can't change based on the number of dogs that you own. And I am not talking about how you house them I am talking about vaccinations, how you feed them I mean there is just mad stuff and it's not science based.*

The take home message is that the interview participants understand that there are codes, both at State and Territory and industry level. There is a shared feeling that they have the potential

for making breeders accountable but that they are not properly enforced, because of a lack of resources.

### 3.2 Dog Owner Survey (Data Set 4)

Dog owners were asked in question 21 in the dog owner survey if they believe that there should be commercial dog breeding in Australia. Dog owners were able to provide a comment to expand on their yes or no answer and 1200 left a comment. Using the key words of 'enforce' and 'monitor' and extending the search to include the words 'police' and 'inspect' there were 66 dog owners that stated that breeders need to have their breeding premises regularly checked, monitored, policed or inspected. One comment captures the sentiment of a proportion of them:

*Breeding should be significantly regulated and monitored to ensure puppy farms as such do not exist. Conditions should be the same standard as dog boarding facilities. There should be strict limits on the number of dogs and the number of litters each bitch produces. After this is reached there should be mandatory de-sexing.*

### 3.3 Dog Breeder Survey (Data Set 5)

Dog breeders were asked in question 38 if they believe the current regulation of dog breeding in Australia is effective. This question has already been considered in some detail in a number of other sections in this Chapter. Table 20 in Part II of this Chapter records that over 83% of those who answered the question believe that the current regulation is not effective. One hundred and seventy participants provided comments to expand on their answer to question 38. Table 16 in Part II of Chapter 7 confirms that 14 of these participants identify a lack of effective enforcement or monitoring as the reason why they did not believe that the current regulatory framework is effective. These 14 comments are further analysed and summarised in Table 26 below.

That 14 of the breeders that provided comments around the effectiveness or otherwise of the current regulatory framework identifying a lack of monitoring and enforcement, suggests that these breeders understand that there is regulation but that the absence of enforcement and monitoring allows breeding to take place in a way that may not provide appropriate welfare outcomes for dogs. One comment that stood out suggests that even ANKC registered breeders

may breed in a way that does not provide appropriately for dogs. The comment calls for regular policing of all breeders:

*Even ANKC registered breeders have suboptimal welfare standards. Regular checks on facilities need to be carried out, especially when stud dogs and entire bitches reside together on the same property. I would like to think that ANKC breeders are held to a higher standard than backyard breeders or commercial breeders and as such should house and care for their breeding dogs (not breeding 'stock'!) to a greater standard than is the minimal requirement. The only way to do this is with regular policing. Perhaps ANKC breeders are required to submit photographs of the facilities and each registered dog in that facility on a regular basis for scrutiny. If something looks fishy on the photos, then personnel may be sent out for a random inspection. I would fully support this rule change.*

**Table 26 - Dog Breeder Survey Question 38**

Number of Comments made identifying this issue	Key words - enforcement/ effectiveness/ monitor Summary of issue around effectiveness – 14 comments in total (some cover more than one point)
4	Breeders are not monitored
3	Small scale backyard breeders are not regulated
4	Regulation exists but it is not enforced because of a lack of resources and/or lack of inspectors
2	Non-government regulatory bodies such as the RSPCA are not objective
3	Regulation exists but it is only enforced against those who are already trying to do the right thing and who are visible, such as registered breeders

#### 4. Summary of Major Findings

This research has found that there is a perception amongst stakeholders that the ANKC does have a role in establishing breeder accountability, but that there are a number of issues that currently impact or reduce its ability to undertake this role and that reduce its ability to monitor, inspect and regulate the breeding practices of their registered members.

This research has also found that a number of both breeders and owners who are current members of the ANKC and the State and Territory canine associations believe that they should

be doing more in terms of supporting and working with other regulatory actors in creating breeder accountability.

## PART IV. DISCUSSION

### 1. Evaluating the Regulation

#### *1.2 Intended Objectives*

This research has found that stakeholders in dog breeding believe that regulation should play a major role in ensuring breeder accountability but that currently regulation fails to achieve reasonable levels of accountability. What accountability there is exists in two States through state-based codes and nationally at industry level with the existence of breeding codes ensuring some level of breeder accountability of registered pure breed dog breeders. This thesis makes suggestions on the ways to both enhance breeder accountability and to improve the effectiveness of breeding codes. These suggestions are set out in Chapter 10.

This thesis has found that some stakeholders are concerned about dog overpopulation. Stakeholders did not express strong views on the role of regulation in reducing dog overpopulation. Instead those that did express views believe it is best addressed through education that encourages de-sexing practices and de-sexing initiatives. Views were expressed by those that advocate for registered pure dog breeding that pure breed dog breeding does not contribute to dog overpopulation. These findings suggest that more research is warranted into the proportion of registered pure breed dogs that find themselves in shelters or pounds and the scope for more research in this area is noted in Part IV of Chapter 11.

#### *1.2 Stakeholder Awareness*

All stakeholder groups that were interviewed or surveyed expressed views that they had a good awareness of the current regulatory framework regulating dog breeding. For dog owners, this is evidenced by the data that is set out in Table 15 in Chapter 7. This confirms that none of the owners surveyed had used the regulatory framework to attempt to make a breeder accountable. This is interesting considering the evidence set out in Part II of Chapter 6 where over 10% of the owners that undertook the dog owner survey confirmed that their most recently acquired dog had required veterinarian attention for an illness or condition that that they believed was due to

its breeding or breed type and yet none of these 461 owners had used the legal system to seek redress or to make the breeder of their dog accountable for the costs incurred because of the medical condition. The case law analysis that was undertaken as part of the critique of the current regulatory framework that took part in Chapter 3 also revealed only a handful of cases where dog owners had used the legal system to make breeders accountable for sick or defective puppies. This suggests that the issue of information asymmetry that was considered in Chapter 6 is relevant and that owners may not be aware of their rights as owners, despite their perceptions. To consider this further, details around what information is provided by breeders and what level of communication and contact that owners have with breeders is considered in Chapter 9.

## 2. Evaluating Stakeholder Perceptions of the Effectiveness of the Regulatory Space

### 2.1 Accountability of Regulators

What individual dog breeders are doing at any particular time to ensure dog welfare and good outcomes for those that purchase dogs from them depends on their own breeding practices, their connection to the various regulatory actors, the culture that has been instilled by the regulatory actors and the effectiveness of targeted policing and inspections. Scott confirms that it must be remembered that the law and the legal system is just one aspect of accountability and that industry regulators can play a vital role in establishing changes of behaviour that is in line with community and stakeholder expectations.<sup>21</sup>

This research confirms that there is a need for the ANKC and the State and Territory canine associations to use education, regulatory and non-regulatory techniques to ensure that their breeder members are breeding in accordance with their own codes and in ways that are acceptable to the community.

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<sup>21</sup> Colin Scott, 'Accountability in the Regulatory Space' (2000) 27(1) *Journal of Law and Society* 38, 55

## 2.2 Enforcing and Monitoring Codes

The findings set out in Chapter 8 confirm that stakeholders believe that codes are not properly enforced or monitored. Regulatory theory confirms that codes can play a role in regulating behaviour as part of self-regulation but to do so they need to be effectively monitored.

Responsive regulators need to understand their role in enforcement and monitoring. When funding is minimal even thinly resourced policing and regulatory inspection can be effective at addressing risks of great scale and complexity.<sup>22</sup> This can be achieved by concentrating on areas of concern and by fixing problems that are brought to their attention, through problem-orientated policing.<sup>23</sup> For codes to be effective, be they at State or industry level they need to be supported by an effective compliance system that includes: structured complaints handling processes; appropriate enforcement and monitoring and inspection processes. This compliance system need not be complex, but it needs to be supported by procedures and processes that impose penalties on those who breach the codes.

This research has found that canine associations do take action to enforce compliance when complaints are brought to their attention but that complaints are not made in great numbers. Just what type of compliance system is appropriate in the dog breeding industry depends on the structures of the various canine associations and their attitudes to compliance. This research was unable to obtain data directly from the ANKC or the State and Territory associations in relation to this. Dog owners and dog breeders believe that there is a need for each State and Territory canine association to appoint officers with responsibility for conducting inspections of breeding premises and for ensuring breeding paperwork is completed. For the larger canine associations, it might be more appropriate to set up a compliance department with educational advice and auditing functions and a computer system to keep track of legal requirements and whether they have been fulfilled. Despite the complexity of any system that is ultimately appropriate, the single most effective thing that motivates regulatees to comply is the probability of swift

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<sup>22</sup> John Braithwaite, 'Relational Republican Regulation' (2013) 7(1) *Regulation and Governance* 124, 140.

<sup>23</sup> *Ibid*, 139.



detection and sanction.<sup>24</sup> The appointment by each of the State and Territory canine associations of an officer charged with site inspections, ensuring compliance with codes and educating breeders about appropriate breeding practices will go a long way to achieving this. Such an appointment will also promote a culture of compliance and assist members in becoming good dog breeders.

The State and Territory canine associations collect membership fees, registration fees, levies from all affiliated breed and dog sporting associations. The smallest of the State and Territory canine associations has just under 1000 financial members and the largest over 10 000.<sup>25</sup> Each association employs permanent staff including an executive officer. The largest of the canine associations could look to pay for a part time independent inspector from revenue raised from memberships, puppy registration fees and the various other fees that are charged by them. This research shows that breeders do believe that there is a need for inspections to improve accountability of breeders.

This research confirms that all the regulatory actors need to have in place effective enforcement and monitoring systems around their regulation, including any codes that seek to set standards or modify behaviour. In this regard, this research supports the findings in research undertaken by Cooke that considered the reality of puppy farms in Australia and the regulatory gaps and inconsistencies, lack of effective enforcement and focus on animal welfare that allows puppy farms to flourish. Having examined the regulation, but without collecting any empirical evidence in support, Cooke concludes that self-regulation of commercial breeding in Australia is currently ineffective. Cooke's work does not extend to a consideration of industry breeding codes, nor did it consider the role of the ANKC.<sup>26</sup> The research undertaken in this thesis sees a place for effective self-regulation of both hobby and commercial breeding by the ANKC.

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<sup>24</sup> Christine Parker and Vibeke Lehmann Nielsen, *Explaining Compliance* (Edward Elgar Publishing, 2011),10.

<sup>25</sup> Australian National Kennel Council Limited, 'ANKC Ltd Membership Statistics 1995 to 2017' (2017) <[http://ankc.org.au/media/6597/memberstats\\_to-16.pdf](http://ankc.org.au/media/6597/memberstats_to-16.pdf)>

<sup>26</sup> Katherine Cooke, 'Defining the Puppy Farm Problem: An Examination of the Regulation of Dog Breeding, Rearing and Sale in Australia' (2011) 5 *Australian Animal Protection Law Journal* 3 , 8.

## PART V. CHAPTER SUMMARY

The analysis undertaken in this Chapter provides an answer to the third research component which sought to determine the effectiveness of the current regulation of dog breeding in Australia. This Chapter did this by discussing the research findings relating to the effectiveness of both the State and industry codes, the ANKC and the State and Territory canine associations as private regulatory actors, using measures suggested by the regulatory theory literature set out in Chapter 4 and by using the data that was obtained for this thesis.

This research has found that there are issues with the effectiveness of both State and industry codes and with the ANKC as a regulatory actor within the dog breeding regulatory environment. There are opportunities to look forward and consider what may be done to improve the effectiveness of codes and to make the ANKC a more effective governing body and regulatory actor of registered breeders of pure breed dogs, in terms of improving breeder accountability. This is discussed further in Chapter 10 which reflects on the effectiveness of a responsive regulatory environment and the role that both regulatory and non-regulatory techniques can play into the future in establishing and ensuring sustainable dog breeding practices.

The next Chapter considers the fourth research component that seeks to understand the role of regulation in relation to the current supply and demand chains that exist in dog breeding in Australia. This component is fundamental to any study that seeks to consider the role of regulation in assisting an industry to address its issues and assess the role of regulation in addressing these issues.

## CHAPTER 9: EXAMINATION OF DEMAND AND SUPPLY CHAINS IN DOG BREEDING

### PART I. INTRODUCTION

This Chapter addresses the fourth component of the research question by considering what the drivers are for both consumers and breeders in dog breeding. This Chapter considers the demand for and supply of dogs in Australia. More specifically it looks at what people want when they acquire a dog, and the motivations and objectives that breeders have for producing and selling dogs.

As can be seen from a consideration of the literature set out on what motivates dog buyers, set out in Part VII of Chapter 1, there is minimal literature that looks into what motivates those who breed dogs. The results of the case law analysis set out in Part V of Chapter 2 found a small number of cases that indicated that the motivations of breeders may be relevant when considering legislation. There is a need to consider what motivates dog breeders, to ensure that regulation is targeted effectively. Should it be ascertained that most breeders are motivated by animal welfare concerns, as opposed to financial gain, then the type of regulatory measures that are needed to protect dogs and consumers may be different. Where the majority of regulatees can see the benefit that regulation brings and believe that regulation is fair there will be a higher expected level of willingness to comply with that regulation.<sup>1</sup> If breeders are motivated by a love of dogs they will be more willing to comply with regulation than if they are motivated by financial gain and see regulation as preventing them obtaining this objective.

Part II of this Chapter looks at what owners' demand when they acquire a dog by analysing data that asks consumers specifically what they want when they acquire a dog and their views on commercial dog breeding. Part III examines what motivates breeders and Part IV contains a discussion of the findings.

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<sup>1</sup> Valerie Braithwaite, 'Closing the Gap between Regulation and the Community' in Peter Drahos (ed), *Regulatory Theory Foundations and Applications* (ANU Press, 2017) 25, 28.

## PART II. DEMAND FOR DOGS

### 1. What do people want when they acquire a dog?

A number of questions were asked in the dog owner survey around why the survey participant acquired the type of dog that they did, how much they paid for their dog and the extent of the research they undertook before acquiring that dog.

Dog owners were asked what role their most recently acquired dog plays in their life. The table below provides a breakdown of the responses.

*Table 27 - Dog Owner Survey Question 3*

<b>Q 3 - What are the roles this dog plays in your life? (Tick as many as apply)</b>		
<b>Answer Choices</b>	<b>Number of responses</b>	<b>%</b>
Companion	2253	79.33
Show dog	400	14.08
Obedience or agility	291	10.25
Watch dog	521	18.35
Family member	2590	91.20
Service dog	46	1.62
<i>Total Comments</i>	<i>290</i>	
<b>Total Respondents</b>	<b>2841</b>	<b>100</b>

Over 91% of participants consider their dog to be a family member and close to 80% of owners have dogs as companions. This being the case, it is fair to say that when looking for a dog the vast majority of Australians want a dog that is able to live as a companion and/or as a family member.

Dog owners were also asked how much research they undertook before they acquired their dog. Table 28 below provides a breakdown of responses.

Table 28 - Dog Owner Survey Question 4

<b>Q 4 - How much research did you undertake before you acquired this dog?</b>		
<b>Answer Choices</b>	<b>No of responses</b>	<b>%</b>
I undertook extensive research	802	28.38
I undertook some research	607	21.48
I undertook no research as I knew the type of dog I wanted	545	19.29
I undertook no research as it was a spur of the moment decision	76	2.69
I undertook no research as the dog was given to me or rescued by me	461	16.31
Other	335	11.85
<b>Total responses</b>	<b>2826</b>	<b>100</b>

These results indicate that almost half of survey participants undertook some research prior to acquiring their most recent dog. Approximately 20% of owners did not undertake any research because they knew what type of dog they wanted.

In answer to question 4, survey participants were able to select 'other' as their answer should the answer choices not be appropriate. Three hundred and thirty-five dog owners selected the 'other' response and these responses have been analysed in more detail. The breakdown of the 'other' responses are set out in Table 29 below.

Table 29 - Breakdown of 'Other' Answers Provided in Dog Owner Survey Question 4

Q 4 - Breakdown of the "other" – How much research did you undertake?	Number of responses	%
Our family or I have had this breed previously	95	28.35
We bred the dog or bought the dog to use in our breeding program	30	8.95
We believe in rescue and liked the breed or type	19	5.65
Dog breeder recommendation (or knew the breeder so trusted him or her)	17	5.06
Needed a companion for our first dog	15	4.46
Family member or friend gave the dog to me	15	4.46
Dog was provided as a 'stud' fee, in return for a mating to another breeder's female dog	10	2.96
Researched breed or type but not the specific dog	9	2.88
Wanted a dog that that was low allergy	4	1.19
I was young so did little research	3	0.88
Vet recommendation	3	0.88
Thought I knew enough but didn't / None. I was an idiot.	2	0.55
Some other reason	113	33.73
<b>Total participants that selected the 'other' answer</b>	<b>335</b>	

Following the breakdown of comments that were made in the 'other' category there still remained 113 comments (33.7%) that were not able to be categorised, being specific to the participant. Three examples:

1. *We had taken in a family displaced by the bushfires and the kids fell in love with their dog, so he was given to them as a gift.*
2. *The dog was specifically given to my partner about a month before we became a couple. He is a very small breed, a cavalier x terrier and while my partner has only ever had outside dogs I've lived in a 3-dog house since I was little. I know a fair bit about my dog and canine obedience in general and he is brilliantly behaved.*
3. *Wikipedia is my friend.*

Survey participants were asked where they acquired their dog. Table 30 below provides a breakdown of the answers provided.

*Table 30 - Dog Owner Survey Question 5*

<b>Q 5 - Where did you acquire this dog?</b>		
<b>Answer Choices</b>	<b>Number of responses</b>	<b>%</b>
From a dog breeder	1,303	46.17
From a dogs' home, dog shelter or rescue organisation	654	23.18
From a pet shop	88	3.12
In response to a newspaper advertisement	190	6.73
I bred him/her	118	4.18
I cannot remember	7	0.25
Other (please specify)	462	16.37
<b>Total that answered the question</b>	<b>2822</b>	

Table 30 above shows that nearly half of all survey participants acquired their dog directly from a dog breeder, and approximately a quarter of the dogs came from the dogs' home/dog shelter or rescue organisation. Just over 3% of owners acquired their dog from a pet shop and close to 7% obtained their dog in response to a newspaper advertisement. Over 16% of owners chose 'other' and provided explanations of where they acquired their dog. Table 31 provides a breakdown of these answers.

Table 31 - Breakdown of 'Other' Answers Provided in Dog Owner Survey Question 5

<b>Q 5 - Breakdown of the 'Other' – Where did you acquire this dog?</b>	<b>Number of responses</b>	<b>%</b>
A friend or acquaintance	118	25.52
Gumtree advert	41	8.88
Previous owner	38	8.22
A farm	37	8.00
Rescued him or her	34	7.35
Accidental mating	15	3.24
From a vet	15	3.24
Backyard breeder	12	2.59
Pet shop	11	2.37
A stray	11	2.37
From overseas	11	2.37
RSPCA	9	1.94
Online advert	9	1.94
Abandoned	8	1.72
From a breeder that had kept him/her to show	7	1.51
From a foster carer or we fostered him or her	7	1.51
Newspaper or give away advert	6	1.29
Puppy farm	5	1.07
Unwanted	5	1.07
Notice Board or School Newsletter	4	0.86
Banksia Park	3	0.64
Guide Dogs Association	3	0.64
Other	55	11.90
<b>Total participants that selected the 'other' answer</b>	<b>462</b>	



Following the breakdown of comments that were made in the 'other' there still remained 55 comments (11.90%) that were not able to be categorised, being specific to the participant.

Four examples:

1. *From the back of a ute, I complained to the owner and he gave me the dog*
2. *His owner was sent to prison*
3. *The breeder nearly killed her from malnutrition and starvation as she does with all her other animals*
4. *The dog followed me home*

Tables 28, 29, 30 and 31 demonstrate that how and why dog owners acquire their dogs are varied.

Question 6 required participants to rank a number of matters that were important to them when they made their acquisition choices. The results are set out in Table 32 below.

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Table 32 - Dog Owner Survey Question 6

<b>Q 6 - How important were the following matters when you decided to acquire this dog?</b>						
<b>Answer Choices</b>	<b>Essential</b>	<b>Very Important</b>	<b>Important</b>	<b>Somewhat Important</b>	<b>Not at all important</b>	<b>Total</b>
The dog be of a specific breed	<b>37.51%</b> 1,053	<b>15.89%</b> 446	<b>13.00%</b> 365	<b>15.39%</b> 432	<b>18.20%</b> 511	<b>2,807</b>
The dog had a good temperament when I first met her	<b>47.29%</b> 1,325	<b>27.23%</b> 763	<b>14.20%</b> 398	<b>7.49%</b> 210	<b>3.78%</b> 106	<b>2,802</b>
That I could meet the breeder and/or view the parents of the dog	<b>34.62%</b> 961	<b>15.20%</b> 422	<b>9.80%</b> 272	<b>8.32%</b> 231	<b>32.06%</b> 890	<b>2,776</b>
How the puppy/dog had been raised	<b>36.28%</b> 1,011	<b>21.17%</b> 590	<b>13.35%</b> 372	<b>12.38%</b> 345	<b>16.83%</b> 469	<b>2,787</b>
Predictability about size at maturity	<b>25.03%</b> 697	<b>21.44%</b> 597	<b>20.57%</b> 573	<b>13.86%</b> 386	<b>19.10%</b> 532	<b>2,785</b>
Predictability about temperament and future needs	<b>35.92%</b> 1,001	<b>30.03%</b> 837	<b>18.48%</b> 515	<b>8.61%</b> 240	<b>6.96%</b> 194	<b>2,787</b>
I was able to rescue a dog that needed a good home	<b>30.74%</b> 829	<b>16.80%</b> 453	<b>15.39%</b> 415	<b>12.83%</b> 346	<b>24.25%</b> 654	<b>2,697</b>
The dog was bred by a registered member of a Canine Association	<b>29.55%</b> 812	<b>9.75%</b> 268	<b>8.22%</b> 226	<b>9.50%</b> 261	<b>42.98%</b> 1,181	<b>2,748</b>
The dog would get on with other animals and/or children	<b>52.09%</b> 1,456	<b>25.30%</b> 707	<b>13.20%</b> 369	<b>5.97%</b> 167	<b>3.43%</b> 96	<b>2,795</b>
The dog would have good conformation/structure	<b>25.39%</b> 704	<b>16.08%</b> 446	<b>19.11%</b> 530	<b>14.82%</b> 411	<b>24.59%</b> 682	<b>2,773</b>
The dog had been genetically tested by its breeder against potential genetic issues	<b>23.78%</b> 655	<b>11.95%</b> 329	<b>11.29%</b> 311	<b>13.07%</b> 360	<b>39.91%</b> 1,099	<b>2,754</b>

The results set out above in Table 32 lend support to the data found in response to the question that looked at the roles that dogs play. Dog acquirers place great importance on the dog's temperament and ability to get on with other animals and humans. People acquire dogs to become companion or family members. This being the case, recognising that the reasons behind acquisition of a dog is a very personal thing, it is not surprising that:

- over **77%** indicate that the dog *would get on with other animals and/or children* was either an essential or very important consideration;
- nearly **75%** indicate that *the dog had a good temperament when I first met her* was either an essential or very important consideration;
- over **65%** indicate that *predictability about temperament and future needs* was either an essential or very important consideration;
- over **60%** indicate *that how the puppy was raised* was either an essential or very important consideration;
- over **53%** indicate *that specific breed* was either an essential or very important consideration; and
- although over **49%** identified that the *ability to meet the breeder and or view the parents* was either an essential or very important consideration, over **32%** considered it not at all important. This may reflect a high number of dog owners who do not buy a specific breed with close to 43% considering it not at all important that their dog was bred by a registered member of a canine association.

Question 8 asked dog owners how satisfied they are with their purchasing/acquiring choices. Table 33, below, provides an understanding of the satisfaction level of dog owners with their dog. This data confirms that the vast majority of dog owners are either completely or very satisfied with their acquisition choices. Of the 2799 participants that answered this question, less than 2.5% were not satisfied with their choice.

*Table 33 - Dog Owner Survey Question 8*

<b>Q 8 - How satisfied are you with your purchasing/acquiring choices when it comes to this dog?</b>		
Answer Choices	Number of responses	%
Completely satisfied	2095	74.85
Very satisfied	456 16.29%	16.29
Somewhat satisfied	183 6.54%	6.54
Not satisfied	35	1.25
Very unsatisfied	30	1.07
<b>Total</b>	<b>2799</b>	<b>100</b>

Owners were asked if they would buy/acquire the same breed or type of dog again. The results are set out in Table 34 below.

*Table 34 - Dog Owner Survey Question 9*

<b>Q 9 - Would you buy/acquire the same breed or type of dog again?</b>		
Answer Choices	Number of responses	%
Yes	2603	93.26
No	188	6.74
<b>Total</b>		<b>2791</b>

Table 34 above confirms that the vast majority of survey participants would purchase or acquire the same type of dog again.

## **2. Who should be allowed to breed dogs in Australia?**

Having confirmed that dog owners want the ability to choose a dog that suits them and their family and is of good temperament, this thesis next contemplates whether the way a dog has been bred is important to those who acquire dogs. It also considers whether owners have strong opinions on who should be allowed to breed dogs. Having identified in Part II of Chapter 6 that the stakeholders believe that the existence of backyard and unregulated

breeding is an issue, this research now seeks to understand if dog owners have views on who should be allowed to breed dogs and on how dogs are bred.

Question 22 asked dog owners who should be allowed to breed dogs in Australia. Dog owners were asked to tick all that apply from a given list. The list and results are set out Table 35 below.

*Table 35 - Dog Owner Survey Question 22*

<b>Q 22 - Who should be allowed to breed dogs in Australia?</b>		
<b>Who should breed dogs</b>	<b>Number of responses</b>	<b>%</b>
Anyone who wants to	59	2.08
Anyone provided the local council has given them a license to breed	196	6.90
Members of one of the Canine Associations affiliated with the Australian National Kennel Council (ANKC)	1255	44.19
Members of another breeding association such as the Master Dog Breeders & Associates (MDBA)	791	27.85
There should be an approved breeders' scheme at either Local Council, State or National level and members of the scheme should be able to breed dogs	1266	44.58
No one at all as there are too many dogs in Australia without homes	236	8.31
I have never turned my mind to this question	297	10.46
Did not indicate any of the above but responded in other	28	0.99
Did not indicate any of the above or respond in other	1	0.04
<b>Total Sample (multiple response)</b>	<b>2840</b>	

These figures suggest that most dog owners believe that dog breeding should not take place in an unregulated way. The majority of dog owners indicated breeders should hold a licence or a membership of a breeding association or approved breeder's scheme. Just over 44% of owners believe that members of the ANKC should be allowed to breed. Another 28% of owners confirmed that they would allow members of one of the other breeding associations to breed.

### 3. What type of dog breeding do dog owner's support?

Question 21 in the dog owner survey asked dog owners to provide their views on commercial dog breeding. It generated 1200 comments around dog breeding. The question sought a 'yes' or 'no' answer but also provided participants with the opportunity to expand on their answers by making a comment. Table 36 below provides a summary of the responses.

*Table 36 - Dog Owner Survey Question 21*

<b>Q 21 - Do you believe there should be commercial dog breeding in Australia?</b>		
<b>Belief in commercial dog breeding</b>	<b>Number of responses</b>	<b>%</b>
Yes	957	39.70
No	1453	60.30
<b>Total responses</b>	<b>2841</b>	<b>100</b>

This data reveals that, on the face of it, many dog owners take issue with the 'commercial' breeding of dogs and do not accept that dog breeding sits alongside the more traditional animal production businesses.

Of the dog owners that provided a comment in response to question 21, 235 comments referred to 'puppy farms' with all of them wanting to see these operations eliminated. Another 66 respondents referred to the term 'backyard breeder' and indicated that such breeding practices should also be shut down or banned.

A number of respondents who believe that there is a place for commercial breeding identified that regulated commercial breeding is more acceptable than unregulated backyard breeding. The following 3 comments provide a sample of the answers expressing feelings about backyard breeders:

- 1. I believe that for certain reasons, such as illnesses and behaviour it is good to have a controlled breeding environment. It should be preferred above backyard breeding. Under strict regulations, I don't see any issues with commercial breeders, if the welfare of the dogs is the major concern. I think that the focus should be on backyard breeders, this should be heavily penalized and controlled, de-sexing should be mandatory for every single backyard dog.*

2. *There will always be commercial dog breeding, whether legal or illegal. It should be legal so that the industry can be monitored and regulated appropriately, not driven underground. If there was no legal breeding at all, it would open the door for even more backyard puppy farm type breeders.*
3. *I strongly believe that puppy farms and back yard breeders should be made illegal. That breeders should not be able to create designer, mixed breeds and sell them for a fortune. That registered breeders should be closely controlled and monitored to ensure the health and quality of the puppies and the health and welfare of the breeding parents. There should also be a restriction on the number of dogs they can have, a limit on the number of puppies they can have and a retirement plan for the dogs who are no longer breeding.*

Despite these strong views, there was quite a spread in participants' responses, with close to 40% believing that commercial breeding was acceptable. Notably, however, a common proviso in the comments from these participants was that breeders should maintain good welfare standards for breeding dogs and the puppies they produced. Many of those who condemned commercial breeding of dogs did so on the basis that they equated commercial breeding with 'puppy farming.'

Owners were also asked to indicate if the dog that they last acquired was, in their opinion, a pure breed dog. The responses are summarised in Table 37 below.

*Table 37 - Dog Owner Survey Question 16*

<b>Q 16 - Is this a pure breed Dog?</b>		
<b>Answer Choices</b>	<b>Number of responses</b>	<b>%</b>
Yes	1,804	65.55
No	948	34.45
<b>Total</b>	2752	

Table 37 indicates that nearly two thirds of dogs most recently acquired by survey participants were deemed by them to be pure breed dogs. This result is in line with research conducted in

the UK by Sietto and others that confirms that companion dog owners value having the ability to acquire healthy pure breed dogs.<sup>1</sup>

#### 4. Information received by dog owners

Dog owners were asked questions around the information they received when they acquired their most recent dog. Question 7 asked participants to indicate what written information they received when they acquired their dog. Table 38 sets out the quantitative data obtained.

*Table 38 - Dog Owner Survey Question 7*

<b>Q 7 – What written information did you receive when you acquired / purchase this dog?</b>		
<b>Answer choices</b>	<b>Number of responses</b>	<b>%</b>
Confirmation of the breeder's name and address	1372	48.51
Detail regarding the dog's history and/or temperament	1061	37.52
Details regarding the dog's dietary and/ or health requirements	1294	45.76
Receipt for purchase funds/adoption or rescue fee	1492	52.76
Copy original pedigree documentation	1135	40.13
Microchip details	1869	66.09
Purchase contract	789	27.90
No written information received	484	17.11
Other (please specify)	445	15.74
<b>Total responses</b>	<b>2828</b>	

Close to half of all owners acquired details of who bred their dog. Over half of all owners obtained a receipt for purchase/adoption fees and two thirds received written information about the dog's microchip details. Over a quarter of all dog owners who answered this question received a purchase contract when they acquired their dog. This suggests that over a

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<sup>1</sup> Christina Sietto, Iain M Fraser and Rob W Fraser, 'Investigating Some of the Factors That Influence "Consumer" Choice When Adopting a Shelter Dog in the United Kingdom' (2014) 17(2) *Journal of Applied Animal Welfare Science* 136, 145.



quarter of all those that play any role in selling or rehoming dogs provide a contract to dog owners in relation to the purchase of their dog.

#### 5. Ongoing contact and communication

Dog owners were asked if they maintain contact with the person who bred their dog. The quantitative data received in response to this question is set out in Table 39 below.

*Table 39 - Dog Owner Survey Question 10*

<b>Q 10 - Do you maintain contact with the person that bred this dog?</b>		
<b>Answer Choices</b>	<b>Number of responses</b>	<b>%</b>
Yes	1245	44.95
No	1525	55.05
Comments (510)		
<b>Total that answered the question</b>	<b>2770</b>	

Forty five percent of participants have maintained some level of contact with the person that bred their dog. Five hundred and ten of the participants provided written comments in relation to the extent of the contact maintained. Thirty-four dog owners made comments around the need to maintain contact with the breeder to ensure that they understood the dog's and breed's particular short term and long-term needs:

- 1. We need some advice about our dog's diet and behaviour. Also, we would like to make sure that we are providing a good home to former breeding dogs, so we stay in contact with the breeder.*
- 2. The breeders always made themselves available to help when we were experiencing behaviour issues, they organise a yearly birthday party for the litter, and also take care of the dog if we go on holiday.*

There were another 21 comments that indicated that the owner had become friends with the breeder, for example:

*We have a solid friendship since our purchase, both professional and personal.*

That a large number of owners do maintain contact, and a number do see the benefit of this contact in terms of improving the care that they can provide to their dog, suggests that some level of breeder accountability exists, and that it is viewed as a positive thing by dog owners

## 6. Summary

This aspect of the empirical analysis demonstrates that dog owners desire choice when making their acquisition. Dog owners generally believe that those who breed dogs should either belong to a registered body such as the ANKC or belong to an accredited dog breeder's scheme. The reality that dog owners are acquiring a companion and family member when they choose a dog (as opposed to animals produced for fibre, food or fur) seems to entrench a dislike and distrust in a large proportion of those that acquire dogs of the notion of the commercial production of dogs.

## PART III. SUPPLY OF DOGS

The types of breeders that exist in Australia has been considered in Section 4 of Part III in Chapter 3. The statistics considered there indicate that the majority of breeders in Australia are small hobby breeders. The breeder survey undertaken as part of this research confirms this. Of the 275 breeders that undertook the survey, 32% of them did not breed a litter in 2014, 33% bred one litter, 17% bred two litters, 7% bred three litters and only 8% bred four or more litters.

These breeders were asked a number of questions around their breeding motivations and information that they supply to puppy buyers.

### 1. Dog breeders' motivations

Breeder motivations have been considered in Part III of Chapter 3. The reality is people breed for a variety of reasons and that despite many breeders having admirable reasons for breeding dogs, there are others that adhere to breeding practices even when there is evidence from

both welfare groups and veterinarians that such practices are not in line with modern best practice in terms of dog welfare.<sup>2</sup>

This subchapter analyses a number of questions asked of breeders about their motives and objectives in breeding. Included is an analysis of questions asked about the commercial (or otherwise) aspects to their breeding.

Question 1 in the dog breeder survey asked breeders to rank from one to seven these statements that best described what motivated them to breed their first litter of puppies. The results are summarised in Table 40 below.

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<sup>2</sup> P C Bennett and E Perini, 'Tail Docking in Dogs: Can Attitude Change Be Achieved?' (2003) 81(5) *Australian Veterinary Journal* 277, 282.

Table 40 - Question 1 in Dog Breeder Survey

Q1- Please rank the following statements in order of importance to indicate which best describes what motivated you to breed your first litter of puppies. (Please rank from 1 to 7, with 1 being the one that best describes what motivated you and 7 being the least relevant motivation).														
Ranking	My love of dogs in general		My love of a specific breed of dog		My love of a particular dog I wanted to breed from		My love of competing in dog events		Another breeder encouraged me to breed my first litter		My family have been involved in dog breeding, so I continued the tradition		I believed breeding would provide some financial benefit	
	No. of respondents	% of total sample	No. of respondents	% of total sample	No. of respondents	% of total sample	No. of respondents	% of total sample	No. of respondents	% of total sample	No. of respondents	% of total sample	No. of respondents	% of total sample
1	23	8.36	144	52.36	27	9.82	19	6.91	26	9.45	16	5.82	4	1.45
2	45	16.36	56	20.36	53	19.27	37	13.45	30	10.91	14	5.09	5	1.82
3	51	18.55	29	10.55	63	22.91	53	19.27	32	11.64	9	3.27	3	1.09
4	73	26.55	7	2.55	48	17.45	48	17.45	39	14.18	6	2.18	4	1.45
5	40	14.55	2	0.73	35	12.73	53	19.27	62	22.55	18	6.55	12	4.36
6	7	2.55	3	1.09	9	3.27	20	7.27	32	11.64	80	29.09	68	24.73
7	3	1.09	6	2.18	2	0.73	12	4.36	9	3.27	76	27.64	131	47.64
No Response	33	12.00	28	10.18	38	13.8	33	12.00	45	16.36	56	20.36	48	17.45
Total	275	100	275	100	275	100	275	100	275	100	275	100	275	100
Sample		275		275		275		275		275		275		275

Results above indicate that more than half of the breeders who answered this question ranked as number one, their love of a specific breed of dog as the best descriptor of what motivated them to breed their first litter of puppies. Only four of the breeders who answered this question ranked financial gain as the top motivation for breeding. Of the 227 breeders who answered the question, 131, or 58% listed financial gain as the least motivating factor in breeding.

Question 2 asked breeders to indicate how important a number of listed aims are when they breed a litter of puppies, by selecting if each was: essential, very important, somewhat important or not important. The results obtained are summarised in Table 41 below.

*Table 41 - Question 2 in Dog Breeder Survey*

<b>Q2 – How important were the following aims when you bred your last litter?</b>					
<b>Aim</b>	<b>Essential</b>	<b>Very important</b>	<b>Somewhat important</b>	<b>Not Important</b>	<b>Total that answered</b>
To breed to the Australian National Kennel Council Ltd (ANKC) Breed Standard	70.90% 190	19.78% 52	4.85% 13	4.48% 12	268
To breed fit and healthy companion animals	92.28% 251	6.62% 18	0.74% 2	0.37% 1	272
For the betterment of the breed in Australia	80.00% 216	12.96% 35	4.81% 13	2.22% 6	270
To breed dogs that are fit for their original purpose (i.e., working or service dogs)	66.79% 181	23.25% 63	7.01% 19	2.95% 8	271
To breed dogs that can win in dog events	13.75% 37	38.66% 104	35.69% 96	11.90% 32	269
To make financial gain to allow me to continue to breed my dogs	1.49% 4	5.95% 16	33.09% 89	59.48% 160	269
To make financial gain as a source of income	0.75% 2	1.87% 5	10.11% 27	87.27% 233	267

From Table 41 it can be seen that 90% of breeders who took the survey and answered this question found breeding to the ANKC Breed Standard as either essential or very important. This result was somewhat predictable in light of the answer to question 39, which asked breeders

whether they are members of any of the State or Territory canine associations. Just over 94% of breeders confirmed that they were a member of at least one of the State or Territory canine associations.

Nearly all breeders (99%) found it essential or very important when they breed to breed fit and healthy companion animals. Just under 3% of the breeders who answered this question believed it either essential or very important to make financial gain as a source of income when they bred their last litter and just over 7% of them thought it was essential or very important to make financial gain to allow them to continue their breeding. It is acknowledged that of the 241 breeders that answered this question in the survey only ten, so less than 3% disclosed that they bred over 6 litters per year.<sup>1</sup> Therefore it is acknowledged that these results have not captured the views of a great proportion of the larger commercial breeders that operate in Australia.

Ninety three percent of breeders suggest it was important or essential to them to breed in such a way that bettered the breed. By this it is meant to breed in a way that continues to improve their breed in Australia. Ninety percent confirmed it was essential or very important to breed dogs that were fit for their original purpose.

Recognising how important a number of aims are to the vast majority of breeders who answered this question has implications for the role of regulation in regulating breeding, discussed in Part IV of this Chapter. Question 36 asked breeders to indicate which of a number of terms best described their breeding. Table 42, below, summarises the responses.

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<sup>1</sup> Appendix 15 provides a table of responses to question 25 in the Breeder Survey which asked breeders to disclose how many litters they bred in 2014.

Table 42 - Dog Breeder Survey Question 36

Q 36 – Which of the following best describes your breeding?		
Answer Choices	Number of responses	%
A hobby	89	83.63
A small business	9	3.98
A commercial breeding enterprise	5	2.21
Other 1. To produce working dogs – <b>4 comments</b> 2. A hobby and an outing – <b>1 comment</b> 3. To improve my breed to show – <b>1 comment</b> 4. A passion – <b>2 comments</b> 5. We are a veterinary practice and we also breed dogs- <b>1 comment</b> 6. I am a primary producer – <b>1 comment</b> 7. It is a hobby, based on the economics and public recognition, but it takes almost as much time and effort as a small business – <b>1 comment</b> 8. I operate a small boarding kennel and a training school as a business with Domestic Animal Business Registration through Local Council – <b>1 comment</b> 9. To breed my own dogs – <b>1 comment</b> 10. To breed new companion or competition dogs – <b>6 comments</b> 11. Hobby and livestock and part of a training business – <b>1 comment</b> 12. Dedication to the breed. Hobby makes it sound like knitting or playing bridge – <b>1 comment</b> 13. An occasional activity – <b>2 comments</b>	23	10.18
<b>Total</b>	<b>175</b>	

Clearly, then, most of the breeders who answered this question describe their business as a hobby. Twenty-three selected the 'other' answer. These answers have been summarised within Table 42 under 13 sub headings. Fourteen breeders stated that they viewed that their business was either a small business or a commercial enterprise.

Only 14 breeders in total, just over 6%, disclosed that there is a business component to their breeding. This relates back to the answers to question 2 where less than 3% of breeders thought it was essential or very important to make financial gain as a source of income from their breeding.

## 2. Information supplied by dog sellers

Both the State and Territory codes and the industry codes include provisions around the types of information that dog sellers should provide to those who acquire dogs. Each mandate the provision of health, vaccination and microchip documentation, and the industry codes require the provision of pedigree and breed information.

The dog breeder survey included a number of questions that asked breeders to set out what material they provided to new owners. Questions 16 in the dog breeder survey asked breeders if they provide a written contract when they sell their puppies. In total 256 breeders (63%) confirmed that they currently provide a written contract and 95 (37%) confirmed that they currently do not.

This research sought to determine what types of terms were included in these contracts so question 17 asked those that did confirm the provision of a written contract about what key terms are included in their written contracts. The responses are summarised in Table 43 below.

*Table 43 - Dog Breeder Survey Question 17*

<b>Q 17 - What do you currently provide when you sell your puppies? (Tick as many as apply)</b>		
<b>Answer Choices</b>	<b>No of responses</b>	<b>% of responses</b>
Confirmation of price	146	91.82
Confirmation of puppy's pedigree and registration details	151	94.97
Confirmation of health testing	142	89.31
Confirmation of vaccination	157	98.77
Microchip details	155	97.48
Return-puppy clause should the buyer be unable to keep the puppy	155	97.48
Details on how the puppy has been raised	147	92.45
Information around the puppy's behavioural and / or physical attributes	135	84.91
Guarantees relating to the puppy's health	127	79.87
<b>Total Sample</b>	<b>159</b>	

The table above confirms that the clear majority of breeders that do provide a written sale contract include a number of terms within the written agreement.



This research also sought to determine breeders' view on the introduction of mandatory puppy contracts. Question 18 asked breeders if they would support the introduction of mandatory puppy contracts. This question included some guidance for breeders:

- *These could include such things as - the information you provide to potential puppy buyers upon which they make their buying decisions, confirmation of the health tests that you undertake, information around how the puppy was raised and what vaccination he or she has had prior to leaving your premises. They could also contain a clause that encourages new owners to return the puppy should they not be able to keep it.*

Of the 252 breeders that answered this question, 187 (74%) confirmed that they would support the introduction of a mandatory contract.

To consider what breeders were providing when they sold puppies, question 22 asked breeders what they currently provide to puppy buyers. The responses are summarised in Table 44.

*Table 44 - Dog Breeder Survey Question 22*

<b>Q 22 - What do you currently provide when you sell your puppies? (Tick as many as apply)</b>		
<b>Answer Choices</b>	<b>No of responses</b>	<b>% of responses</b>
Written receipt for funds paid	213	87.65
Written or emailed information on the history of the breed	188	77.37
Written or emailed information about health, lifestyle and dietary requirements	234	96.30
Pedigree / Registration document	228	93.83
Vaccination certificate	240	98.77
Microchip certificate / change over document	240	98.77
Deworming tablets	120	49.38
Blanket	145	59.67
Crate	26	10.70
Toy	188	77.37
Food	213	87.65
Other	93	37.86
<b>Total Sample</b>	<b>243</b>	<b>100</b>

The table reveals that close to 99% percent of sellers provide both vaccination and microchip documentation, with 96% providing information about health, lifestyle and dietary requirements. This data has revealed that the vast majority of breeders provide the information

that is required by both the state and industry-based codes as has been considered in Section 2 of Part V of Chapter 2.

Breeders were also asked to reveal what health testing they undertook. Question 22 in the dog breeder survey asked breeders about health testing. The results are set out in Table 45 below.

*Table 45 - Dog Breeder Survey Question 24*

<b>Q 24 - What health testing do you undertake in prospective breeding stock? (Tick as many as apply)</b>		
<b>Answer Choices</b>	<b>No of responses</b>	<b>% of responses</b>
Elbow and hip dysplasia	158	65.66
Progressive Retinal Atrophy	94	39.00
Collie Eye Anomaly	33	13.69
Cataracts	50	20.75
Legge Perthe's disease	8	3.32
Other	154	63.90
None	22	9.13
<b>Total Sample</b>	<b>241</b>	<b>100</b>

This table reveals that 91% of breeders state that they undertake some health testing before they breed. As there are over 200 breeds in Australia, each having a unique set of health issues and genetic considerations, it is not surprising 64% of the breeders who undertook the survey indicated that the tests that they undertook fell outside of the list provided.

### 3. Summary

As has been discussed above, the majority of dog breeders who undertook the survey are not motivated by money when they breed, viewing their breeding as a hobby. The vast majority of breeders confirm it is essential to them that they breed healthy companion animals in accordance with the ANKC breed standard. Most state that they provide a large array of information and other items when they sell puppies and that undertake genetic testing.

## PART IV. DISCUSSION

### 1 What do people want when they acquire a dog?

This research sought to understand what people want when they acquire a dog. The findings confirm that dog owners acquire dogs for many reasons but chiefly as companions and family members. The places that dogs come from vary. The majority of owners place great importance on a dog's temperament and ability to get on with other animals and children. Some owners seek to acquire a specific breed of dog while others prefer to adopt or 'rescue' a dog that they perceive to be in need. Once a decision has been made the vast majority, over 93% of owners are satisfied with their choices and would acquire the same type of dog again. The vast majority of dog owners enjoy and value having an array of dog types and breeds to choose from when it comes to acquiring a dog.

This research has found that most dog owners want a dog that will fit in as a companion and family member. For an active family this might mean an active dog. For a more sedentary family they might be looking for a smaller dog with less exercise requirements.

### 2. What type of dog breeding do dog owners support?

This research sought to understand buyers' opinions on who should be allowed to breed dogs. As was set out in Section 4 of Part III of Chapter 3 there are a number of types of breeders that bred and sell or give away dogs in Australia. This research broadly grouped breeders into being either: commercial, hobby or backyard/occasional breeders.

Commercial dog breeding operates in Australia and both the case law and the literature reviewed in this thesis refer to it. This research has found that dog owners are acutely aware of its existence. The case law analysis confirms that Tribunals that are asked to hear cases around sick and defective puppies acknowledge the reality of commercial breeding. One Tribunal member in the case of *Knowles v Atkinson (General)* [2002] NSWCTTT 224 made recommendations in the findings about how one such commercial breeder could improve her business practices:

*Having heard the oral evidence of the Applicants I am not convinced that Ms Atkinson made the limitations of her guarantee clear to them. I believe that the Applicants understood the guarantee to be a general promise to take the dog back and provide a*

*refund in the case of serious ill health. This interpretation is given some support by the statement which the Respondent has produced herself which indicates that she would provide a refund if the dog were put down, it would seem, irrespective of the cause of the illness. I would suggest that a written document which clearly sets out the nature of the guarantee and its limits be incorporated into the Respondent's business practices.<sup>2</sup>*

The survey of dog owners provided insight into dog owners' perspectives on who should be breeding dogs. When dog owners were asked to express their views on commercial breeding 1200 comments were obtained and many of these comments express strong views about the rightfulness or wrongfulness of commercial breeding. Seventy-two comments specifically condemn the commercial breeding of companion animals. These 72 dog owners believe that a better approach to the question of the commercial breeding of dogs would be to encourage hobby breeders that breed for the love of the dog and to allow these breeders to cover their breeding costs but never to allow breeders to breed in a way that compromises the welfare of puppies. One such comment:

*Hobby breeders breed out of love for that breed and seek to generally recover their costs. Breeding for money makes a commercial enterprise from a companion animal. As a society we accept the margin for cases of less than ideal handling of animals for stock, but not for our loyal companions. Commercial breeding facilitates this from the animal that trusts us most.*

A range of comments that were made by dog owners who expressed a view on commercial dog breeding are set out in Appendix 13.

The findings set out in Part II confirm that dog owners seek choice when it comes to acquiring their dogs and this includes the ability to buy a purebred dog from one of the 33 000 registered breeders in Australia<sup>3</sup>, buy a mixed breed dog or rescue a dog from an animal shelter or rescue organisation. Dog owners support breeding by both commercial and hobby breeders and accept as a reality the existence of backyard and occasional breeders. What they do not support and

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<sup>2</sup> *Knowles v Atkinson* [2002] NSWCTT 224.

<sup>3</sup> Australian National Kennel Council Limited, 'A Forensic View of Puppy Breeding in Australia 2017' (2017) <<http://ankc.org.au/media/6598/a-forensic-view-of-puppy-breeding-in-australia>>v4.pdf>.

seek to eradicate is breeding by puppy farms and the use of practices that do not ensure good welfare outcomes for breeding dogs and puppies.

### **3. Motivations and objectives of breeders**

This research has found that most dog breeders aim to: breed dogs that comply with their breed standard and that are suitable and healthy companions; continue to improve the breed standard in Australia; ensure there are good examples of the breed; and ensure that their dogs are fit for the original purpose for which that breed was established. As nearly 94% of breeders that undertook the breeder survey disclosed they are members of one of the State or Territory canine associations there is an opportunity for the ANKC and the canine associations to provide support to their members to achieve these objectives. There is a role for industry codes that set out breeding practices that facilitate these objectives and that outline the types of breeding practices that give breeders the best opportunity to meet them. There is also a place for a regulatory actor/governing body that can regulate its member breeders to ensure that they are using breeding practices that best facilitate these breeding objectives.

### **4. Existence of commercial breeding**

Commercial dog breeding does exist in Australia. This research has found that those that acquire dogs are not opposed to the commercial nature of dog breeding provided that the commercial element does not compromise dog and puppy health and welfare. That is, it is not the commercial element that is considered wrong in the ways that dogs are produced in large breeding facilities but the assumption that is often made that such commercial breeding facilities are unable to provide sufficient care and welfare for all the dogs living at these commercial facilities.

This research asserts that provided dogs are bred in a way that ensures good levels of care, accommodation, socialisation, health testing and that all puppies are behaviourally sound and suitable for life as a companion dog then there is no strong stakeholder objection to commercial dog breeding. The problem is, as can be seen by some of the comments that have been set out in Appendix 13, that dog owners perceive that large-scale farming is needed to make dog breeding a profitable enterprise. The perception is that this might occur at the expense of ensuring the companionship and welfare aspects that are so vital in companion dogs. The

stakeholders that have provided their voices to this research generally condemn commercial dog breeding if they equate it with puppy farming. Those that acquire dogs do not want dogs to be produced in a way that makes their production financially viable if this compromises their welfare.

## 5. Implications of increasing regulation to supply and demand

As previously stated, this research has found that owners value having a variety of options when deciding to acquire a dog. The question is how can regulation be used to ensure that dogs, of whatever type or breed are bred carefully, with appropriate health testing and raised so that they are capable of becoming effective family companions? Increasing regulation imposed on both hobby and commercial breeders may mean that less people are able to afford dogs bred within this regulated environment, if the introduced regulation imposes substantial costs on regulated breeders that non-regulated breeders do not have to face. Such costs will ultimately be passed on to buyers reducing demand for dogs born within the regulated environment and increasing the demand for dogs being bred by backyard/occasional breeders. It may also lead to breeders leaving the regulated environment and choosing to continue to breed in the unregulated environment.

A further consideration of the potential financial costs of extra regulation is beyond the scope of the research undertaken for this thesis. More research in this area is warranted and this is noted in Part V of Chapter 11.

## PART V. CHAPTER SUMMARY

The analysis undertaken in this Chapter provides an answer to the fourth research component which sought to determine the drivers for consumers and breeders. This has been achieved by considering what dog owners want when acquiring dogs and what motivates dog breeders. This Chapter has found that consumers want choice when they acquire a dog and they want to be able to acquire dogs that are suitable to live as companions. There is a role for regulation in ensuring that dogs are bred in ways that ensure high levels of care and welfare.

This was the final research findings Chapter. The next Chapter contains a discussion on how the current regulatory framework might be made more responsive and outlines the proposed changes that can be made to the current regulatory framework in light of this research.

## CHAPTER 10: A RESPONSIVE REGULATORY FRAMEWORK IN DOG BREEDING

### PART I. INTRODUCTION

This thesis has considered the role and effectiveness of regulation in dog breeding in Australia. Chapters 6 confirmed that there are a number of issues in dog breeding. Many of these issues have existed for many years and were identified in the regulatory critique and literature review that took place in Chapter 3. Chapter 6 confirmed that the major issue is a lack of breeder accountability that allows breeders to use breeding practices that do not ensure good outcomes for dogs and dog owners, including undertaking minimal or inappropriate genetic testing and poor breeding selections. The issue of information asymmetry and the use of inappropriate selling practices and overpopulation were also identified. Chapters 7 and 8 confirmed that regulation plays a role in addressing the issues but that there are issues with the existing regulatory framework that limit its effectiveness. Effectiveness of regulation was considered in terms of: whether it meets its intended outcomes and community and stakeholder expectations; stakeholder understanding; and enforcement and monitoring. Chapter 9 highlighted a strong desire amongst stakeholders for dogs to enjoy an appropriate quality of life and for dog owners to have a wide range of choice when selecting a new dog.

This research identified 4 major roles for regulation, with three centering around the establishment of breeder accountability and the last on reducing dog overpopulation. This research has found that the current regulation does not make breeders accountable. This research was unable to confirm whether current regulation reduces dog overpopulation.

This research considered stakeholder understanding and awareness of the existing regulation, in particular the State and Territory and industry codes. This research found that breeders and owners believe they have an awareness of the regulation but there was minimal evidence to show that owners had used any of the codes to pursue any rights provided to them under these codes or that breeders had been made accountable in relation to any of the obligations imposed upon them.

This research also considered the effectiveness (or otherwise) of the regulatory actors. The measures that were considered were the regulator's accountability and ability to enforce and



monitor codes. This research asserts that the ANKC and the State and Territory canine associations have a role to play in establishing breeder accountability, but there are a number of issues that currently impact or reduce their ability to undertake this role. There is a growing awareness of the need for the ANKC to do more, in terms of supporting and working with other regulatory actors to establish breeder accountability.

## PART II. FRAMEWORK FOR CHANGE

### 1. Introduction

The fourth research aim that is set out in Part II of Chapter 1 is:

- To consider changes that might be made both to the regulatory framework and in terms of breeding practices that will enhance sustainable dog breeding practices in Australia

In light of this research aim and the findings set out in Chapters 6 to 9, this Chapter provides a framework for change that could be made to the regulatory framework that currently exists in dog breeding to improve outcomes for dogs and consumers.

The framework is provided in the context of the research finding that a large proportion of hobby dog breeders are not motivated by money. Many hobby breeders do not operate their breeding practices around any particular business model and may not factor in any notion of sustainability or profitability in decisions they make when they breed. As has been considered in this thesis, many breeders shy away from the notion of breeding commercially, partly because State and Territory canine association breeding codes specifically discourage them from doing so.<sup>1</sup> Those that do breed commercially may be more interested in ensuring that their business is sustainable and profitable. Despite the motivations behind breeding, regulation must play a role in ensuring that all breeders adopt good breeding practices and that the puppies that they sell and dispose of are suitable in terms of temperament, physical and genetic health.

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<sup>1</sup> Appendix 3 provides a link to each of the State and Territory canine associations breeding codes. The final column in that table sets out the clause within the code that specifies the breeding purposes that is encouraged by the applicable canine association.

This research has provided overwhelming evidence of stakeholder's dislike of puppy farms and commercial and hobby breeding practices that produce dogs in a way that compromises their health and socialisation.<sup>2</sup> Despite this dislike of these breeding practices, there continues to be regular media exposure of the existence of large puppy farms across Australia that have been able to operate undetected for many years.<sup>3</sup> This media exposure and concerted advocacy efforts have meant that since this research commenced in 2012, there have been a number of changes, and proposals for change to dog breeding regulation.<sup>4</sup> Attempts to make change to existing legislative frameworks for dog breeding in Australia have occurred in a number of States and Territories where governments have embarked on lengthy and consultative processes to consider regulatory change. These governments have shifted from a major reliance on primary legislation such as the anti-cruelty and animal welfare legislation, to recommending secondary

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<sup>2</sup> Chapter 6 identified puppy farms as a major issue and that the banning or elimination of them was a high priority for all stakeholders. Chapter 8 indicated that a proportion of the stakeholders believed the regulatory environment was not effective because it failed to eliminate puppy farms. Chapter 9 confirmed that a proportion of puppy buyers sought to avoid the acquisition of a puppy produced on a puppy farm.

<sup>3</sup> Caroline Zielinski, 'RSPCA Rescues 100 Dogs in Puppy Farm Raid', *The Age* 1 November 2013 2013 <<http://www.theage.com.au/environment/animals/rspca-rescues-100-dogs-in-puppy-farm-raid-20131101-2wmp.html>>, Susie O'Brien, 'Cruelty of Puppy Farms Stains Victoria', *Herald Sun* (Victoria), 1 June 2014 2014 <<http://www.heraldsun.com.au/news/opinion/cruelty-of-puppy-farms-stains-victoria/story-fni0fhie-1226938393613>>, Sarah Dean, 'The Dog Farm Dungeon: No Sunlight, No Fresh Air and Surrounded by their Own Filth - Puppies Rescued from Squalid Underground Bunker', *Daily Mail Australia* (Melbourne), 6 June 2014 <<http://www.dailymail.co.uk/news/article-2649753/No-sunlight-no-fresh-air-surrounded-filth-How-woman-kept-12-puppies-trapped-squalid-underground-bunker-dog-farm.html>>, Beau Donnelly, 'Diseased, Injured Dogs Rescued from Puppy Farm', *The Age Victoria* (Victoria), 2014 <<http://www.theage.com.au/victoria/diseased-injured-dogs-rescued-from-puppy-farm-20140721-zt6x3.html>>, Marika Dobbin, 'Filthy, Hungry and Cramped. Puppy Factory Raided', *The Age* (Victoria), 8 June 2016 2016 <<http://www.theage.com.au/victoria/filthy-hungry-and-cramped-puppy-factory-raided-20160608-gpee1x.html>>, Ellen Whinnett and Rob Harris, 'Show Dogs Shame', *Herald Sun* (Melbourne), 9 June 2016, 1; *ibid* and Animals Australia, *How Big is the Puppy Factory Problem?* (2017) <<http://www.animalsaustralia.org/features/puppy-factory-problem.php>> and Lee Brooks and Clare Blumer, *NSW RSPCA Raid Puppy Farm, Confiscate Nearly 100 Dogss* (2017) <<http://www.abc.net.au/news/2017-06-09/puppy-farm-gets-nearly-100-dogs-confiscated-in-rspca-raid/8602366>>.

<sup>4</sup> See the Chronology of Regulation of Dog Breeding set out in Appendix 2.

legislation such as codes, and an increase in the number of actors playing a role in the regulatory environment.<sup>5</sup>

This research recognises that even with a strong acceptance of the need for change, the changes that can actually be made are subject to a number of factors such as: legislative timetables; the influence of pressure groups; the advice of experts; the views of those who may be affected directly by the new regulation; the diversity of scientific interpretation of any evidence presented; the attitude and interest of the media; the state of public opinion and existing legal constraints. As such, this research does not recommend a complete abandonment of the current regulatory framework, as to do so would limit its practical usefulness. Any regulatory reforms that recommend wholesale change are unlikely to be considered seriously given the many implementation challenges and factors that limit the effectiveness of legislative change as touched upon above. This research recognises and extends work undertaken by Scott that confirms that procedural changes that do not sweep away all old procedures, but rather that builds on what is already there by adapting ways of doing things, may be an appropriate way of improving existing regulatory environments.<sup>6</sup> Such changes may have better chances of instilling change given they may be better received and understood by regulatees.

This Chapter now examines how the regulatory framework might change by becoming more responsive and more reflective of society's culture and needs. This research proposes the establishment of a responsive regulatory environment as set out in Section 2 and the adoption of regulatory and non-regulatory changes as set out in Sections 3 and 4.

## 2. Establishing a responsive regulatory environment

The essential components of a responsive regulatory environment were considered in Section 3 of Part III of Chapter 4. Central is the need to incorporate a multi-level integrated approach to enforcement that uses an escalating range of regulatory tools and enforcement measures to

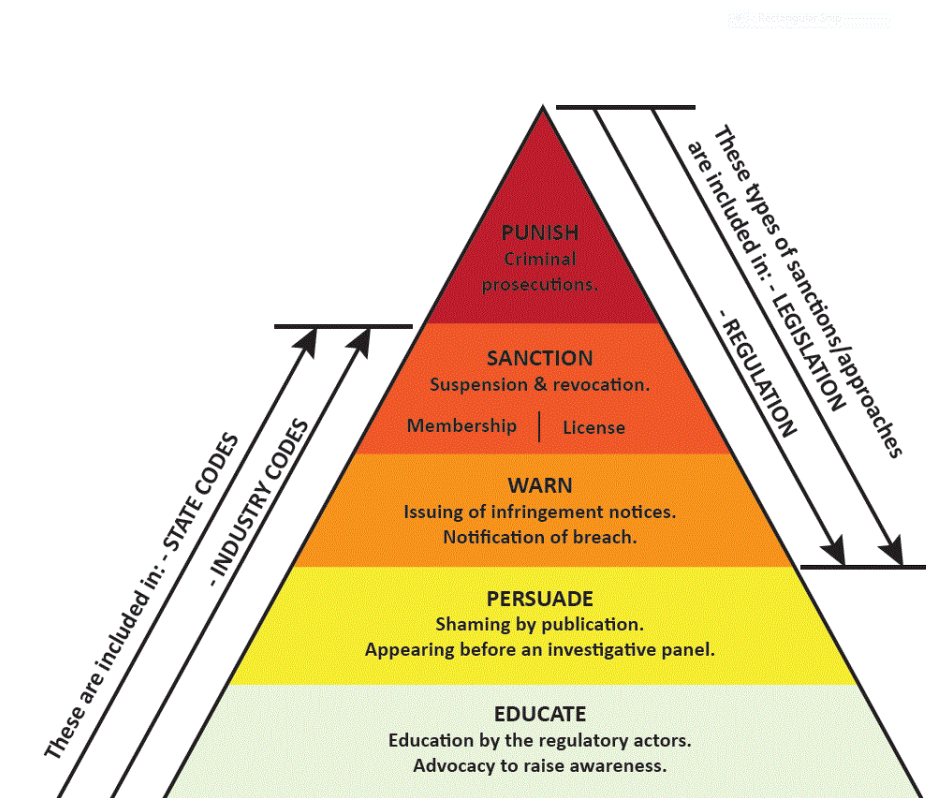
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<sup>5</sup> Mike Radford, *Animal Welfare Law in Britain: Regulation and Responsiveness* (Oxford University Press 2001); Mike Radford, *Animal Welfare in Britain: Regulation and Responsibility* (Oxford University Press 2nd ed, 2002) 192.

<sup>6</sup> Colin Scott, 'Analysing Regulatory Space: Fragmented Resources and Institutional Design ' (2001) *Summer Public Law* 329, 348.

gain the desired regulatory outcomes. It must also recognise the role that both the State governments, local councils and the State and Territory canine associations play.

Having considered the failings and shortcoming with the current regulatory framework as set out in Chapters 6 to 9 Figure 4, below, illustrates a simplified enforcement pyramid for dog breeding in Australia.



*Figure 4 - Proposed Enforcement Pyramid in Dog Breeding*

This pyramid has been adapted from work done by Gunningham and Sinclair, which captures and extends work done previously by Gunningham and Grabosky.<sup>7</sup> This pyramid illustrates a multi-

<sup>7</sup> Neil Gunningham and Darren Sinclair, 'Smart Regulation ' in Peter Drahos (ed), *Regulatory Theory Foundations and Applications* (ANU Press, 2017) 133 , 136 and N Gunningham and P Grabosky, *Smart Regulation : Designing Environmental Policy* (Clarendon Press 1998), 397.

level integrated approach and enforcement approach that can be taken by both the State Government and the Industry regulators. These approaches start with education, through to persuasion, warnings, sanctions and finally punishment as options that are available to regulate breeders that are subject to either a State or industry code of breeding. One layer that might need more explanation is that of 'Persuade'. Currently the Victorian Canine Association Inc. uses persuasion as it both publishes the names of breeders who breach its breeding code and requires breeders who are accused of breaching their code of responsible breeding to appear in front of a panel of volunteer, experienced breeders who hear the complaint and can decide to issue a warning or suspension or other penalty that they deem appropriate in accordance with their schedule of penalties. This is explained in more detail in section 3.2 of Part II of this Chapter.

The approaches taken by the regulatory actors should be flexible enough to be receptive to change and incorporate mechanisms that are both regulatory and non-regulatory that encourage compliance. The regulatory environment needs to employ those mechanisms that encourage breeder accountability and have the ability to punish those who are using breeding practices that do not support good welfare outcomes for dogs and good outcomes for those that acquire dogs. Regulatory actors need to understand the motivational postures of those that they regulate. The results set out in Chapter 9 confirm that most small breeders are not motivated by money. They breed as a hobby and therefore might be considered quite deferential, that is more responsive to regulation imposed upon them by an industry regulatory actor that they see as understanding why they breed and that provides them with education around how to improve dog welfare. Those breeders that do prioritise money in their breeding might seek to remain more distant from authority if they believe that engagement will be financially costly. The regulatory actors in dog breeding need to be aware of motivational posturing and aware of the groups of breeders that exist. Regulation will be more effective if dog breeders either believe that the regulatory actor has legitimate authority, or they believe in the

purpose of regulation, namely the pursuit of good dog welfare. If either is present, cooperation of regulatees should be high.<sup>8</sup>

As was considered in Chapter 4, responsive regulatory theorists such as Tusikov call for a regulatory environment that is able to integrate responsive ideas around regulation to ensure that regulation is understood and adaptive.<sup>9</sup> Braithwaite, Gunningham and Sinclair assert that regulatory actors should play an interrelated role in identifying and resolving issues and problems and in deciding upon appropriate regulatory and non-regulatory mechanisms and tools that respond to and can address the issues and problems.<sup>10</sup> This research has identified both the issues and the regulatory actors that are able to play a role in addressing them. This research has also identified that there are many stakeholder groups and a community that is passionate about the welfare of breeding dogs and puppies being produced by breeders. The dog breeding regulatory environment is one that would benefit from becoming more responsive.

Regulatory theory recognises the reality that empirically regulation has pluralised and, in many industries, businesses and their industry bodies are becoming more involved in regulating industry members and codes and standards are being relied upon more to achieve compliance.<sup>11</sup> This is the case with the regulatory framework that exists in dog breeding in Australia where codes exist at both State and industry level and where enforcement is being undertaken by two or more regulatory actors. A responsive regulatory environment needs to understand all components and the roles that each regulatory actor can and should play in achieving compliance. The ANKC and the State and Territory canine associations provide codes to regulate their members. This research acknowledges that they can play an increasing role in improving

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<sup>8</sup> Valerie Braithwaite, Kristina Murphy and Monika Reinhart, 'Taxation Threat, Motivational Postures, and Responsive Regulation' (2007) 29(1) *Law & Policy* 137, 139.

<sup>9</sup> Natasha Tusikov, 'Transnational Non-State Regulatory Regimes ' in Peter Drahos (ed), *Regulatory Theory Foundations and Applications* (ANU Press, 2017) , 348.

<sup>10</sup> John Braithwaite, *Regulatory Capitalism: How it Works, Ideas for Making it Work Better* (Edward Elgar, 2008), 59, Gunningham and Sinclair, above n 7, 139.

<sup>11</sup> Peter Drahos (ed), *Regulatory Theory Foundations and Applications* (ANU Press, 2017), xxxi.

outcomes for dogs being produced by their members and for consumers who acquire a dog from their members.

The regulatory environment in dog breeding will become more responsive if mechanisms are established that, firstly, create breeder accountability and, secondly, raise an awareness in breeders of what type of breeding is expected and accepted by stakeholders. Responsive regulatory theorists such as Braithwaite, Healy and Simm confirm that an effective regulatory framework should incorporate both punitive and persuasive methods of regulation.<sup>12</sup> A responsive dog breeding regulatory environment should include a suite of both regulatory and non-regulatory techniques, as are set out in Figure 4, that encourage good breeding practices and that both educate and punish breeders who fail to use appropriate breeding practices.

This Chapter continues with an examination of several suggested regulatory and non-regulatory changes that might be put in place to enhance outcomes for dogs, dog owners and breeders. These changes are suggested in light of; the purpose and objectives of existing legislation and regulation of dog breeding; the findings of this research and the proposed enforcement pyramid.

### 3. Regulatory changes

This research has identified a number of possible regulatory changes that might improve the current regulatory framework. Figure 5 below, provides a schematic presentation of the proposed framework for change to both regulation and in terms of how the regulatory actors enforce or interact with the regulatory framework.

This change is required to ensure that both hobby and commercial breeders are accountable for the puppies that they produce, irrespective of motivations for breeding. Despite Braithwaite's belief that public awareness can be a scarce resource and it is often only a disaster or crises that brings about appropriate regulatory change, when it comes to dog breeding stakeholders, there

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<sup>12</sup> Judith Healy and John Braithwaite, 'Designing Safer Health Care Through Responsive Regulation ' (2006) 184(10) *Medical Journal of Australia* , Michelle Welsh, 'Civil Penalties and Responsive Regulation: The Gap Between Theory and Practice' (2009) 33(3) *Melbourne University Law Review* 908 and Gabrielle Simm, 'Regulating Sex in Peace Operations ' in Peter Drahos (ed), *Regulatory Theory Foundations and Applications* (ANU Press, 2017) , 420.

is a good awareness of the changes that can be made to improve outcomes for dogs, breeders and dog owners.<sup>13</sup>

This research focuses more specifically on: the role of licensing; the role of codes, the implementation of a dog registration system; mandatory genetic testing; mandatory disclosures and the implementation of an approved breeder's scheme.

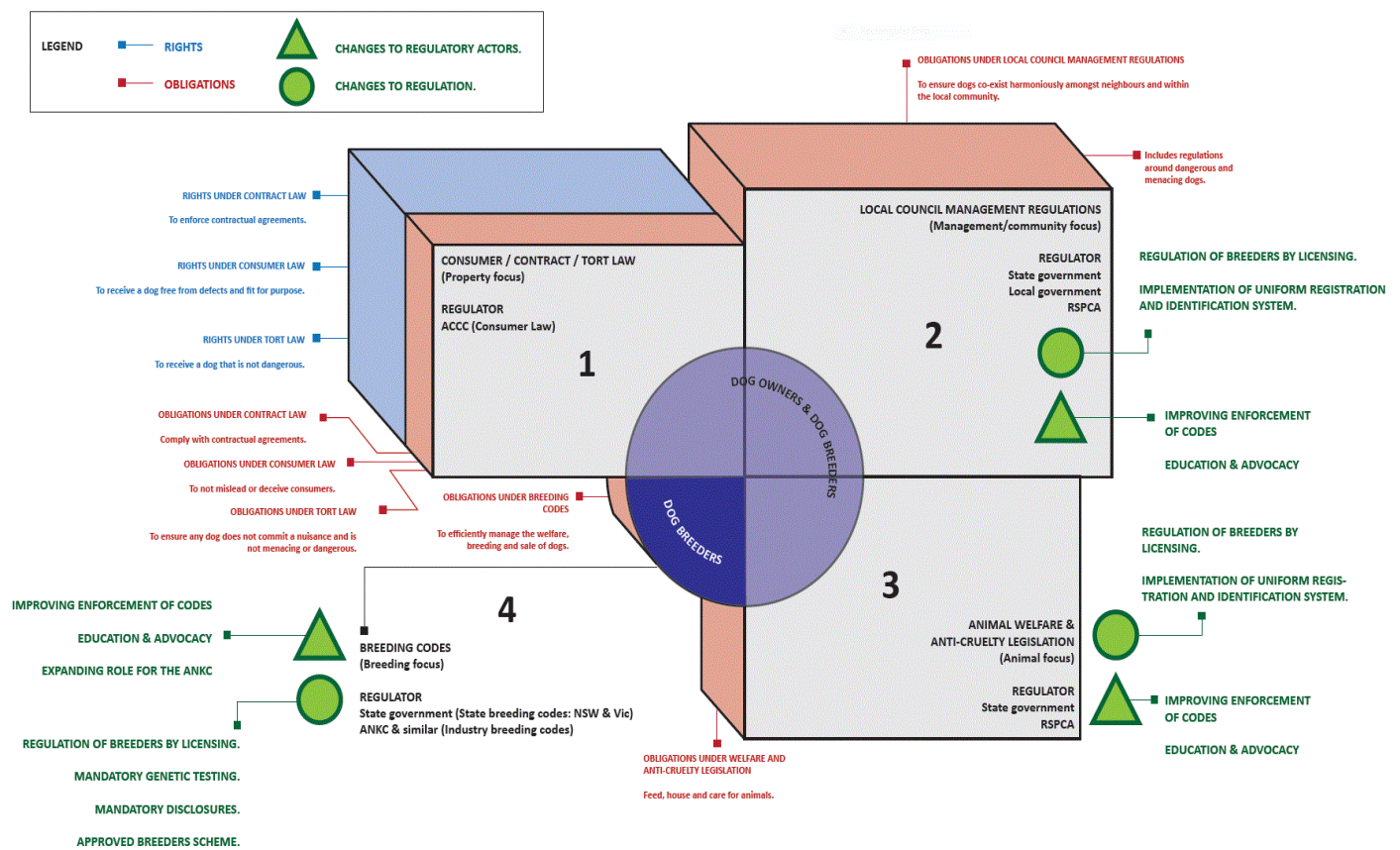


Figure 5 - Proposed Changes to the Regulatory Framework in Dog Breeding

<sup>13</sup> Braithwaite, above n 10, 32.



### 3.1 Regulation by Licensing

As was set out in Part II of Chapter 7, the lack of a licensing system for breeders was identified by stakeholders as one of the major regulatory issues. Stakeholders voiced their views that indiscriminate breeding should not be allowed and what is needed is the establishment of a regulatory environment that creates some accountability through the licensing of breeders. Support for the implementation of a breeder licensing system came from three of the five data sets analysed in this research.

Licensing schemes have been implemented in other jurisdictions for a number of years. Dog breeders in the UK have been required to hold a licence since 2015 if they breed more than five litters a year.<sup>14</sup> Australian animal advocacy groups such as the RSPCA and the Animal Welfare League Australia (AWLA) have called for registration and licensing of dog breeders for a number of years, believing that licensing is a fundamental step towards ending puppy farming.<sup>15</sup>

A well drafted licensing scheme should be able to provide for routine mandatory inspections, ideally on an annual basis, and should be able to provide for the service of improvement notices, and for the seizure of dogs that are being treated cruelly.<sup>16</sup> Should dogs be seized, a disqualification order from holding a licence again for a certain period might be appropriate.<sup>17</sup>

This research confirms Australia's readiness to accept a licensing scheme for dog breeders at either State or national level. There has been some consideration of the implementation of a national or State and Territory breeder registration and licensing scheme.<sup>18</sup> Given that there is

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<sup>14</sup> UK Government, *Tougher Dog Breeding Licence Controls to Protect Puppies* (2015) <<https://www.gov.uk/government/news/tougher-dog-breeding-licence-controls-to-protect-puppies>>.

<sup>15</sup> RSPCA Australia, 'Legislating to End Puppy Farming - The Way Forward' (2012) <<http://kb.rspca.org.au/afile/508/99/>>.

<sup>16</sup> Mike Radford, *Animal Welfare in Britain: Regulation and Responsibility* (Oxford University Press 2nd ed, 2002), 376.

<sup>17</sup> Ibid, 376.

<sup>18</sup> Anne Boxhall, 'Campaign for National Legislation on Breeding of Companion Animals' (Animal Welfare League Australia, 2013).

no national legislation or commitment at that level such a scheme would need to be overseen by another of the actors in the regulatory environment. This research does not call for the introduction of licensing at national level but calls for the introduction of a breeder licensing scheme in each State and Territory. One was recently introduced in the Australian Capital Territory.<sup>19</sup> The *Domestic Animals Act 2000* (ACT) now contains *Division 3.1 – Controlling breeding*.<sup>20</sup> This Division currently contains 13 sections that provide that it is an offence to breed a dog or cat without a licence, in the applicable form that can be cancelled or varied. Licenses are to be issued by a registrar who must consider the appropriateness of the proposed breeding. The registrar has the power to refuse to grant a license if of the opinion the granting of a licence poses a risk to the public, other animals or if the applicant has failed to comply with either dog management or applicable animal welfare provisions. Given these changes have been recently implemented this research sees a scope to consider the impact of this legislation on breeding in the ACT and this is noted in Chapter 11 as an area for further research.

### 3.2 Role and effectiveness of codes

This research has considered the role that codes can play in improving breeding practices. How codes can be made more effective was considered in Part III in Chapter 4. Codes of practice/codes of conduct are a common part of industries that rely on a diversity of regulatory actors and are often used to regulate animal husbandry.<sup>21</sup> They can play a role in educating those that own, manage or control animals and, as scientific knowledge about animal sentience expands there is a role for regularly updated codes of practice to ensure the provision of best animal care practices. This can only happen if codes are clearly written and capable of being enforced. There may be a role for the consideration of co-regulation in this regard as suggested

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<sup>19</sup> *Domestic Animals Act 2000* (ACT) s72A.

<sup>20</sup> *Ibid*, Division 3.1.

<sup>21</sup> Natasha Tusikov, 'Transnational Non-State Regulatory Regimes ' in Peter Drahos (ed), *Regulatory Theory Foundations and Applications* (ANU Press, 2017) , 340.

by Reeve in her research that confirms that codes that are overseen by government can be more effective than self-regulated codes.<sup>22</sup>

This research confirms that stakeholders believe that there is a role for codes in ensuring breeder accountability but that codes are currently not effectively enforced or monitored. Both canine associations and State government agencies have limited funds to expend on enforcement.<sup>23</sup> As considered in Part III of Chapter 4, when funding is limited, as is the case with State and Territory canine associations that rely on membership fees and fees generated from services to members, enforcement of codes can be effective by concentrating on well-targeted regulatory inspections and by using appropriate sanctions when those inspections reveal compliance failures.<sup>24</sup>

This research proposes that in the longer term a co-regulation approach be adopted, one that incorporates both mandatory State and Territory breeding codes and industry codes. The proposal is that for hobby breeders who are members of the ANKC to be regulated by industry codes and therefore not subject to the State and Territory breeding codes. All other breeders that are not a member of a regulatory body that can play a role in oversight, monitoring and enforcement are to be regulated by State and Territory breeding establishment codes. This is already the situation that exists in Victoria, where recreational breeders who are members of an applicable organisation are exempt from the requirements contained in Part 4 of the *Domestic Animals Act 1994* (Vic) by virtue of being a member of Dogs Victoria. Section 3(1) of the *Domestic Animals Act 1994* (Vic) provides an exemption for 'recreational breeders':

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<sup>22</sup> Belinda Reeve, *The Food Pyramid meets the Regulatory Pyramid* (Doctor of Philosophy Thesis, PhD Thesis, University of Sydney 2014), 114.

<sup>23</sup> Katherine Cooke, 'Defining the Puppy Farm Problem: An Examination of the Regulation of Dog Breeding, Rearing and Sale in Australia' (2011) 5 *Australian Animal Protection Law Journal* 3, 18

<sup>24</sup> Colin Scott, 'Speaking Softly Without Big Sticks: Meta-Regulation and Public Sector Audit' (2003) 25(3) *Law & Policy* 203, 213 and Peter J May and Søren C Winter, 'Reconsidering Styles of Regulatory Enforcement: Patterns in Danish Agro - Environmental Inspection' (2002) 22(2) *Law & Policy* 143, 152.

*A person who carries out the breeding of dogs to sell, who is a member of an application organisation, if that person has no more than 10 fertile dogs.*<sup>25</sup>

This legislation provides that any breeder that has over ten fertile dogs is not deemed to be a recreational breeder but a commercial breeder and therefore subject to Part 4 of the *Domestic Animals Act 1994* (Vic). These breeders are commercial breeders, as defined in Part 11 of Chapter 2 in this thesis.

### State and Territory Codes

With respect to the State and Territory codes, this research confirms that the stakeholders that took part in this research are aware of these codes but believe that they currently play a minimal role in ensuring breeder accountability. As noted in Chapter 2, this is due in part because the various State and Territory regulatory agencies each play a different role when it comes to enforcing codes. In Victoria for example, the RSPCA is empowered under the *Prevention of Cruelty of Animals Act 1986* (Vic) and is unable to prosecute commercial breeders unless they detect serious breaches of that act. It is often left to local councils to seek compliance with codes and local councils are often unable or unwilling to detect and prosecute puppy farms.

Currently breeding codes exist in only two States. The code that exists in Victoria the *Code of Practice for the Operation of Breeding and Rearing Businesses 2014* (Vic) has been considered in some detail in Chapters 2 and 8, particularly when obligation of dog breeders was considered in Part IV of Chapter 2. The *Domestic Animals Act 1994* (Vic) provides that it is an offence to conduct an animal breeding business on unregistered premises and provides that a licence can be revoked or suspended for various breaches. All breeders are also subject to applicable prevention of cruelty legislation as well so upon inspection of premises there is potential for breeders to be charged with a range of offences, from a suspension of licence to imprisonment for acts of aggravated cruelty.<sup>26</sup>

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<sup>25</sup> *Domestic Animals Act 1994* (Vic), s3(1).

<sup>26</sup> *Prevention of Cruelty to Animals Act 1986* (Vic), s10.

This research calls for the establishment of nationally consistent mandatory breeding codes in all States and Territories. Alongside this there needs to be a consistent approach to inspections and enforcement. States that currently do not have breeding codes can learn from what has occurred in the State of Victoria, who has had a breeding code, significantly in its current form for over three years.

There is no way to predict when such codes will be implemented in the States and Territories although there is increasing advocacy pushing for reform. The role and effectiveness of advocacy is considered in section 4 of the Part of this Chapter.

### Industry Codes

Industry codes exist in each State and Territory and as such, this research sees more immediate potential impact coming from the effective use and enforcement of these codes. This is considered further in section 4.4 of this Part where the expanding role of the ANKC and the State and Territory canine associations is discussed. So that the potential impact of these codes could be considered, this research sought to gain understanding of the enforcement strategies of the State and Territory canine associations. Only one of the canine associations returned the survey and this did not include details as to its enforcement strategy. This research did not therefore collect comparable data on the enforcement strategies that exist at industry level. This research however, has found that the State and Territory canine associations currently play a minimal role in inspecting their members and enforcing compliance with the breeding components of their codes.

Apart from the inspection that is done by Dogs NSW when a member applies for a breeder's prefix, none of the State or Territory canine associations play a role in inspecting or monitoring the breeding premises of their member breeders. Many of the canine associations are not set up to do inspections, nor do they have the power under their codes to mandate the right to inspect or monitor.<sup>27</sup> For codes to be effective appropriate systems need to exist to monitor compliance. Without such a system in place the ANKC and its member canine associations are chiefly

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<sup>27</sup> Dogs NSW, *Become a Breeder* (2016) <<http://www.dogsnsw.org.au/breeding/how-to-become-a-breeder.html>>.

providing a registry service for puppies and their pedigrees. Whilst such a registration system does assist in creating puppy provenance and accountability it alone cannot guarantee the soundness of any of the animals registered on it.<sup>28</sup> Nor can it ensure that registered animals are bred using best welfare practices.

Currently the State and Territory associations do act against breeders who breach breeding codes, but it is only on a whistle blowing basis. That is, only when a complaint is brought by a member of the public or another member breeder is a breach investigated by the association's investigatory officer or panel. The State and Territory canine association survey that was returned revealed that over the 12 months preceding completion of the survey the one association that returned it had received less than ten complaints against members with only two being complaints by members of the public concerning breeding practices of members.

This research calls for the establishment of clearly articulated enforcement strategies by each of the State and Territory canine associations. This would include establishing a responsive regulatory environment where breeders are aware:

- that codes will be enforced;
- that inspectors are in place to undertake both routine and random site inspections;
- that there is a reasonable detection rate;
- of penalties for breaching the code; and
- of successful enforcements against offenders.

Penalties should include economic sanctions such as fines, warnings, licence suspensions and reputational penalties such as publication of penalties imposed on non-complying breeders. Currently Dogs Victoria does set out penalties and publicly list punishments enforced against members in breach.<sup>29</sup> Other State and Territory canine associations do not disclose what they

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<sup>28</sup> Amy Morris, *Policies to Promote Socialization and Welfare in Dog Breeding* (Public Policy Thesis, Masters Thesis, Simon Fraser University 2013), 5.

<sup>29</sup> Dogs Victoria, *Disciplinary Penalties* (2017) <<https://dogsvictoria.org.au/members/news-and-updates/disciplinary-penalties.html>> and Dogs Victoria, 'VCA Penalty Guidelines' (2017) <<https://dogsvictoria.org.au/uploads/Penalty%20Guidelines.pdf>>.

are doing with respect to penalties and given only one of the smaller canine associations returned the survey, this research was unable to determine the enforcement efforts taking place in other States and Territories.

This research calls for more effective enforcement of both industry codes and the State and Territory breeding codes (or the introduction and effective enforcement in States and Territories where they do not exist). Both State and industry regulatory actors have an interest in ensuring compliance with the practices prescribed in these codes and more communication in the future between these regulatory actors will ensure all breeders that are capable of being regulated are aware of their obligations and the real chance of codes being enforced. This is in line with recommendations made by researchers such as Scott who acknowledges that available resources may be better spread across that regulatory network when one of the actors is better equipped to deal with an issue than another.<sup>30</sup>

Given that the current situation in Victoria is that members of Dogs Victoria that have less than ten fertile dogs are not subject to the *Code of Practice for the Operation of Breeding and Rearing Businesses 2014* (Vic) but that all other breeding establishments are, there is a need for Dogs Victoria and the other regulatory bodies in Victoria to work together so that all regulatory actors are aware which breeders are subject to which code.

This research calls for the implementation of mandatory State or Territory based breeding codes and a licensing system for all dog breeders that are not subject to an industry code. Such a system needs to collect a licence fee from all licence holders that would appropriately contribute to the necessary enforcement and inspection functions required to ensure proper compliance with all aspects of the breeding and rearing codes.

### *3.3 Implementation of an Identification and Registration System*

This research identified the lack of puppy provenance, a way to identify where puppies were being born as a canine welfare and health issue in Section 4 in Part II of Chapter 3. This thesis

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<sup>30</sup> Colin Scott, 'Analysing Regulatory Space: Fragmented Resources and Institutional Design' (2001) *Summer Public Law* 329, 332.

confirmed this issue as close to half the owners that undertook the owner survey had no knowledge of who had bred their dog. The lack of a robust identification and registration system for dogs was identified as a management issue in Section 2 in Part II of Chapter 3.

The reality that there currently is no robust consistent registration system for all dogs born in Australia allows breeders to deny responsibility for the puppies that they are producing and dog owners to escape their dog management obligations.

This research calls for the establishment of one national data base that holds information for all dogs born in Australia and enables puppies to be traced back to point of sale. This would include information on: breed type; name of breeder; place bred; genetic testing undertaken; and ownership details. The type of information contained on the microchip should not be dependent on what type of microchip has been inserted, nor on where the dog has been born or what type of breed. Such a data base needs to be kept up to date and made available to all animal management officers. It is acknowledged that even once such a data base has been established and it becomes mandatory to microchip puppies, breeders may not comply, and dog owners may not insist on the provision of this information. Currently there is regulation that does mandate this in Victoria. Part 5 of the *Code of Practice for the Operation of Breeding and Rearing Businesses 2014* (Vic)<sup>31</sup> where all animals that are being sold must be implanted with a microchip and a transfer of ownership form must be provided upon sale. There is a role here for the use of education, to make buyers aware of the benefits of buying a dog that is microchipped and bred by a licenced breeder. The role of education is considered in section 4 of Part II in this Chapter.

### 3.4 Mandatory Genetic Testing

This research identifies the lack of appropriate genetic testing as a major canine health and welfare issue. Stakeholders are of the view that breeders are not currently undertaking all genetic tests that are required to ensure that all puppies they produce, and sell are healthy.

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<sup>31</sup> *Code of Practice for the Operation of Breeding and Rearing Businesses 2014* (Vic), part 5. All animals being sold or given away from the business must be implanted with a microchip by an authorised implanter and must be accompanied by a signed transfer of ownership form which is provided to the new owner upon collection of the animal.



This research has revealed that the majority of surveyed dog breeders assert that they do undertake some type of genetic testing of the dogs that they breed. Some steps are being taken at industry level to guide breeders on what tests may be appropriate in a number of breeds but for a number of breeds no such recommendations exist and testing is not common.

This research calls for the ANKC to provide leadership, guidance and where necessary to mandate genetic testing for breeds where scientific knowledge has confirmed genetic links and poor health outcomes in puppies and where the current veterinary knowledge recommends mandatory genetic testing. Such tests can be mandated through rules that both preclude the issuing of registration of litters of puppies that have not had genetic tests that have been scientifically proven to reduce the incidence of genetic abnormalities and the use of registration suspension for repeat offenders.

### *3.5 Mandatory Disclosures*

This research confirms that information asymmetry is an issue in dog breeding. Both current State based breeding codes mandate keeping of animal health records. In the Victorian code extensive records must be kept. They include: council registration certificates; microchip numbers; details on date of birth; sex; breed; complete health and veterinary history including vaccination and worming details. Such details must be kept for a minimum of 5 years. This code, however, does not mandate that all this information is provided to dog buyers. The code provides that the seller must only provide a health declaration, vaccination certificate, details of worming, microchip transfer form and de-sexing certificate (if applicable).<sup>32</sup> The code in New South Wales contains obligations around transfer of ownership. It mandates that sellers are to offer buyers accurate written information on how to care for the dog into the future.<sup>33</sup> Harmonisation across all codes of what information needs to be provided to buyers would assist in creating awareness and compliance by breeders with their disclosure obligations.

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<sup>32</sup> Clauses 4 and 5 *ibid*.

<sup>33</sup> Clause 9, *Animal Welfare Code of Practice - Breeding Dogs and Cats 2009* (NSW).

Considering the situation in Victoria, Section 54 of the *Domestic Animals Act 1994* (Vic)<sup>34</sup> currently gives Councils the right to refuse to renew the registration of premises as a domestic animal business. There is no current mechanism for dog owners to allow them to approach councils when they purchase a puppy and are not provided the mandatory disclosure documents. Courts also have power pursuant to section 57A to revoke or cancel registration.<sup>35</sup> Changes could be made to the legislation to ensure that domestic animal businesses are obligated to provide mandatory disclosures and if they do not, section 57A or an equivalent section could be enforced against them.

The three State and Territory codes that regulate the sale of companion animals in pet shops require the provision of some information. The Code of Practice for the *Care and Management of Animals in Pet Trade 2005* (SA) requires that buyers of companion animals are provided with printed information on care and follow up vaccination, care and welfare information. This information is only required if the seller has determined that the purchaser has no expertise in animal husbandry.<sup>36</sup> This should be changed to mandate the provision of this information, irrespective of the experience of the dog buyer.

The State and Territory canine associations' codes require the provision of information upon the sale of dogs. The Victorian canine association's code requires members to provide written details of: breed characteristics; vaccination records; responsible dog ownership information; pedigree and registration information; and any other information required by the association.<sup>37</sup> Members of the public are able to report breaches of codes to the applicable State or Territory canine association and the association will take action against their member, pursuant the discipline procedures set out in the breeding codes or their own rules and regulations. This has been considered at Part III in Chapter 6. As an example, Dogs Victoria follow a procedure that they

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<sup>34</sup> *Domestic Animals Act 1994* (Vic), s54.

<sup>35</sup> *Ibid*, s57.

<sup>36</sup> Clause 29, *Code of Practice for the Care and Management of Animals in Pet Trade 2005* (SA)

<sup>37</sup> Clause 20.1.23 *Dogs Victoria Regulations, Codes, Policies & Procedures* (Code - Part 20.1), 15 June 2017

have had in place for a number of years and keep a public record of disciplinary penalties that apply for any breaches by members, including breaches of Breeding Rules.<sup>38</sup>

None of the current codes mandate the provision of: a written contract; receipt for funds or details on how puppies have been raised. This research has found that 53% of dog owners receive some type of purchase documentation when they purchase their dogs and that 28% receive a written contract. When breeders were asked the same question, 88% confirmed that they provided a written receipt and 63% asserted that they provide a written contract when they sell their puppies. Of those that provide a written contract 92% assert that they provide written information in that contract that details how the puppy was raised. Close to 99% of breeder participants confirm that they provide registration, microchip documentation, information about health and lifestyle and dietary requirements of puppies being sold. This being the case, this research confirms that including these obligations into a code would create little extra work for breeders but would provide clarification for owners.

This research has found that a majority of surveyed breeders (74%) would support the introduction of mandatory puppy contracts that provide buyers with more information than is currently required under any codes. This research calls for the introduction of compulsory written puppy sale contracts that include terms on how puppies were raised, as well as the information that is required in current State and Territory breeding codes. Enforcement of these contracts would rest with either the applicable regulatory actor at State or Territory level for registered breeding establishments and approved commercial dog breeders or with applicable State or Territory canine association for registered hobby breeders. For example, in Victoria, Part 4 of the *Domestic Animals Act 1994* (Vic) could be amended to include the requirement of puppy contracts and a similar enforcement process could follow as that already applicable for breaches of Part 4.<sup>39</sup>

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<sup>38</sup> Dogs Victoria, above n 29, 16.

<sup>39</sup> *Domestic Animals Act 1994* (Vic) 3 Pt 4 – Regulation of Domestic Animal Businesses and Related Matters.

### 3.6 Implementation of Approved Breeders Scheme

Currently no State or Territory government or canine association operates an approved or assured breeder scheme although one has been considered by Dogs Queensland.<sup>40</sup> An assured breeder scheme is a system of registration of breeders who are willing to have their breeding practices inspected to prove compliance with best practice according to the body that oversees the scheme. Such breeders are then accredited by the scheme as approved breeders.<sup>41</sup> Such schemes exist in other jurisdictions. The introduction of such a scheme in the UK has been hailed a success for dog buyers and breeders alike. The scheme has been accredited by the United Kingdom Accreditation Service and provides an impartial inspectorate service to ensure that accredited breeders are complying with scheme requirements. The scheme aims to promote responsible breeding that prioritises dog and puppy health and the successful placement of all puppies sold into suitable caring homes.<sup>42</sup>

Dog owners were asked in the owner survey who should be allowed to breed dogs in Australia. Just over 44% of owners believed that only members of an approved breeder scheme should be allowed to breed dogs. The results are set out in Table 35 in Part II in Chapter 9.

There is regulatory theory literature that considers the role of voluntary programs in the area of environmental sustainability. Such programs can be effective if there is both societal pressure for participation and the opportunity for participants to gain financially by participating in the program. In dog breeding we have seen that for registered pure breed dog breeders financial gain is not a highly motivating factor. Most recreational hobby dog breeders are committed to breeding healthy puppies and there is enormous societal pressure to criminalise puppy farms. A

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<sup>40</sup> Dogs Queensland, 'Breeder Accreditation Scheme' (<[http://www.dogsqueensland.org.au/media/1105/28187breeder\\_accreditation\\_scheme\\_-\\_the\\_facts-2.pdf](http://www.dogsqueensland.org.au/media/1105/28187breeder_accreditation_scheme_-_the_facts-2.pdf)>; *ibid.*

<sup>41</sup> The Kennel Club (UK), *Assured Breeder Scheme (2017)* <http://www.thekennelclub.org.uk/breeding/assured-breeder-scheme/> and The Kennel Club (UK), 'The Kennel Club (UK), *ABS Q & A s (2017)* ' (2017) <[http://www.thekennelclub.org.uk/getting-a-dog-or-puppy/finding-the-right-breeder/assured-breeder-scheme-\(information-for-pedigree-puppy-buyers\)/>](http://www.thekennelclub.org.uk/getting-a-dog-or-puppy/finding-the-right-breeder/assured-breeder-scheme-(information-for-pedigree-puppy-buyers)/>).

<sup>42</sup> The Kennel Club (UK), *The Kennel Club Assured Breeder Scheme Standard (2016)* [http://www.thekennelclub.org.uk/media/726864/abs\\_standard.pdf](http://www.thekennelclub.org.uk/media/726864/abs_standard.pdf).

number of the breeders that undertook the survey oppose the existence of puppy farms so the introduction of an assured breeders' scheme that provides a point of differentiation would be supported by the majority of breeders that undertook the breeder survey.

Given the success of approved breeder programs in the UK and pressure in Australia to establish breeder accountability, this research suggests that there is a place for such schemes. On this basis this research calls for the consideration of the introduction of approved breeders' schemes by the State and Territory canine associations.

#### 4. Non-regulatory changes

##### 4.1 Introduction

This research, together with work by Cooke on regulation of dog breeding, is mindful of limited resources and limited political motivation to make large sweeping changes to existing regulation around dog breeding.<sup>43</sup> There are many ways to change behaviour other than through regulation.

##### 4.2 Advocacy

Other jurisdictions recognise the vital role that advocacy and lobbying has in improving outcomes for dogs.<sup>44</sup> This research recognises that in Australia a large number of animal welfare and animal advocacy groups, work to protect animals and to raise awareness of the issues, chiefly the mistreatment, exploitation and suffering of animals and the destruction of unwanted domestic animals. Many of these groups have been influential in pushing for change in the areas of companion animal welfare in Australia. Not all are as influential as others and not all tackle the same issues, but they all play a role in improving outcomes for animals.<sup>45</sup>

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<sup>43</sup> Cooke, above n 26, 18.

<sup>44</sup> Peter Singer, *Animal Liberation* (Jonathan Cape Ltd 1990 Pimlico edition, with a new preface 1995, 3rd ed, 1995), 218 and Thomas G Kelch, 'Cultural Solipsism, Cultural Lenses, Universal Principles, and Animal Advocacy' (2014) 31(2) (April) *Pace Environmental Law Review* 403, 405.

<sup>45</sup> Some of the advocacy groups that specifically seek to assist companion animals in Australia are the Animal Welfare League Australia <http://www.awla.com.au/>, Oscar's Law <http://www.oscarslaw.org/>, Getting 2 Zero. <http://www.g2z.org.au/the-checklist.html> and Martin Balluch, 'How Austria Achieved a Historic Break for Animals'

There are many groups in Australia that specifically lobby and advocate for better treatment of dogs. These groups actively lobby to raise public awareness and money, to campaign in the areas of dog welfare. Such groups are significant stakeholders in the area of dog welfare and their work is recognised as significant in this research by the inclusion of representatives as stakeholders whose views were canvassed. It is further recognised that, given the relevant accessibility available to both State and national politicians, dog advocacy groups in Australia do play a real role in improving outcomes for dogs.<sup>46</sup>

The rest of this part of this Chapter looks: at the role that education can play in addressing the issues in dog breeding; and the expanding role that the ANKC might play in the regulatory space for registered pure breed dog breeders.

### 4.3 Education

This research has considered the role of education of both dog breeders and dog owners in improving outcomes for owners, breeders and dogs. The role that education can play in improving animal welfare outcomes was considered in Part IV of Chapter 4. Animal law researchers such as Goodfellow confirm that there is scope for the use of education to improve how animals are perceived and treated.<sup>47</sup> This research, as set out in Part III of Chapter 8 found that stakeholders believe that it is the role of regulatory actors to provide this education.

#### Dog Owners

This research calls for the implementation of educational programs to raise awareness amongst dog owners of their rights and obligations. As consumers, dog owners should be making

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in Peter Singer (ed), *In Defense of Animals the Second Wave* (Blackwell Publishing 2006) 157; *ibid*; *ibid* and Peter John Chen, *Animal Welfare in Australia Politics and Policy* (Sydney University Press, 2016), 17.

<sup>46</sup> Anne Barrowclough, 'How Much is that Doggy', *The Weekend Australian Magazine* (Sydney ), 19 September 2016, 18, 22.

<sup>47</sup> Jed Goodfellow, 'Animal Welfare Law Enforcement: To Punish or Persuade?' in Peter Sankoff and Steven White (eds), *Animal Law in Australasia* (Federation Press, 2nd ed, 2013) 183, 190.

informed acquisition choices and having access to educational material will enhance their abilities in this regard.<sup>48</sup>

This research makes it clear that there is a need to educate those who acquire dogs to ensure that they are making informed choices. This research asserts that there are 3 key components:

1. education and awareness around the rights that owners have pursuant to the Australian Consumer Law if a dog is sold with a defect;
2. education and awareness generation around the impact that a dog's breed characteristics, including the breed's typical care, health and medical needs, will have on its suitability as a companion animal; and,
3. education and awareness generation around the impact of how a dog has been bred, (including genetic issues) and raised (including behavioural issues) on its suitability as a companion animal;

Cooke, in her paper examining regulation of dog breeding in 2011, found that many dog buyers lack information on the conditions in which their dogs are raised.<sup>49</sup> This research also found a lack of understanding with information asymmetry being a major canine health and welfare issue.

Over the last few years things have improved with a number of State governments recognising the role of education in ensuring that companion dog buyers understand what rights they have when purchasing a companion dog. There are now a number of government publications (available from veterinarian clinics and pet shops) informing dog buyers of the need to do

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<sup>48</sup> David Harvey and Carmen Hubbard, 'The Supply Chain's Role in Improving Animal Welfare' (2013) 3(3) *Animals* 767, 774.

<sup>49</sup> Cooke, above n 26, 22.

research before they purchase a puppy and outlining the key provisions in the Australian Consumer Law that applies to the purchase of pets.<sup>50</sup>

More is needed, and this research calls for the provision of educational material to raise awareness of the health and welfare issues that exist in dogs. Dog owners have a right to understand the links between breeding and issues with their dog's health. When sufficient numbers of owners take legal action under either contract law or under the Australian Consumer Law (ACL), breeders will understand that they cannot continue to breed dogs with health issues and sell them with no consequences. Breeders will also become more careful in placing puppies, ensuring that any 'forever home' is equipped with both the knowledge and the capacity to provide appropriate care for the dogs that they acquire. Consumers need to know what questions to ask when acquiring their dogs.

In this regard, this research extends the position taken in the UK by the Associate Parliamentary Group for Animal Welfare in 2011. That group noted:

*Consumer education is key because if we stop demand then the supply dries up. Educating the consumer on the emotional purchase of a puppy is difficult and all welfare organisations and vet organisations must speak with one voice and have a collective combined education programme.*<sup>51</sup>

### Dog Breeders

Regulation (including codes) cannot be complied with unless regulatees understand what is expected from them. This research calls for the adoption by the regulatory actors of comprehensive awareness initiatives including education and training programs that ensure that dog breeders know what is expected from them in terms of appropriate breeding practices and

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<sup>50</sup> Western Australian Government, *Buying a Pet and the Australian Consumer Law* (28 April 2011) <[http://www.commerce.wa.gov.au/consumerprotection/content/bettertrading/Issue/article\\_004.html](http://www.commerce.wa.gov.au/consumerprotection/content/bettertrading/Issue/article_004.html)>.

<sup>51</sup> Associate Parliamentary Group for Animal Welfare, *Minutes of the Meeting On 6th December 2011* (2011) <<http://www.apgaw.org/meetings-and-events/minutes-archive>>58, Harvey Locke.



compliance with the breeding codes.<sup>52</sup> Breeders also need to be made aware of their obligations to educate those that acquire puppies and dogs from them.

The ANKC currently provides member education, this research calls for an expansion to include education and training around effective breeding practices and more specifically to address embedded harmful breeding practices.

### Role of Stakeholders

All key stakeholders have a role to play in educating the community, dog breeders and dog owners. There may be no single solution, so a combination of methods might be needed. Awareness needs to be raised, and a culture developed ensuring that companion dog buyers do not purchase puppies without fully understanding about their breeding, breed characteristics, how they have been raised and their rights under both contract law and consumer law.

#### 4.4 Expanding Role for ANKC and State and Territory Canine Associations

This part of this Chapter considers a number of changes (both regulatory and non-regulatory) that may be utilised by the ANKC and the State and Territory canine associations to expand their roles in the dog breeding regulatory environment. The ANKC currently has 33 000 members and whilst it cannot regulate non-member breeders, it may, through effective self-regulation and with the support of the other regulatory actors, play a more effective role in addressing the issues in dog breeding.

The ANKC's states that its current missions are:

- 1. To promote excellence in breeding, showing, trialling, obedience and other canine related activities and the ownership of temperamentally and physically sound pure breed dogs by responsible individuals across Australia.*
- 2. To promote responsible dog ownership and encourage State Member Bodies to put in place programs to that effect.*

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<sup>52</sup> Mary Ivec and Valerie Braithwaite, 'Applications of Responsive Regulatory Theory in Australia and Overseas: Update' (2015), 7.

3. *To act as spokesperson on all canine related activities on a National basis on behalf of State Member Bodies and to pledge assistance and support to the respective State Member Bodies.*<sup>53</sup>

The ANKC is currently promoted as:

*The peak body in Australia that is responsible for promoting breeding, showing, trialling, obedience, and other canine related activities and the ownership of temperamentally and physically sound pure breed dogs by individuals across Australia.*

This research asserts that self-regulation can work provided there is high regulatory monitoring by a regulatory actor that understands the environment and how to navigate it. If the canine associations are to move towards becoming more effective peak bodies that promote breeding and ownership of temperamentally and physically sound pure breed dogs, they need to ensure that their regulation (in particular their codes for responsible breeding) are understandable, capable of being enforced and reflective of community expectations.

Enhancing the power of the ANKC and State and Territory canine bodies to control breeders has been identified by the stakeholders as one of the major ways of addressing the issues in dog breeding. The power of the ANKC and the State and Territory canine associations would be enhanced by the adoption of a co-regulatory model with State governments around the establishment and enforcement of their codes.

Part of being reflective of what the community needs is playing a role in enhancing the choices dog buyers have when acquiring a dog. Effective industry bodies have a role in enhancing consumer choice and overcoming information asymmetry.

This research calls for the ANKC and State and Territory canine bodies to play a more significant role in ensuring that their members provide dog buyers with good consumer choices and sufficient information. To ensure that they have a good understanding of the regulatory environment and their role in it, the ANKC needs to stay in touch with legislative change, drive legislative reform and have an effective relationship with legislatures.

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<sup>53</sup> Australian National Kennel Council Limited, *About Us - Mission Statement* (2015) <<http://ankc.org.au/AboutUs/?id=2403>>.

The canine associations need to have in place quality assurance processes and rules that can be followed by members and they need to establish processes that can hold members to account for noncompliance.<sup>54</sup>

#### *4.5 Reconsideration of Position on Commercial Breeding*

As has been examined in Section 2 in Part V of Chapter 2, the ANKC and State and Territory canine associations include provisions in their responsible breeding codes that discourage their members from breeding for the commercial market. Appendix 3 provides details of the industry codes that exist at national and State and Territory level and the clauses that discourage members from commercial breeding.

The reality is that the vast majority of breeders cannot keep all the puppies that they breed. These puppies need to find suitable loving homes and often this includes selling puppies to members of the public. The various clauses in the national and State and Territory industry codes do not prohibit selling puppies but attempt to ensure that profit making is not the primary motivating factor for registered breeders. This research has considered what motivates dog breeders and the results are recorded in Chapter 9. The vast majority of breeders who undertook the survey are not motivated by money but aim instead to breed healthy companion animals. This being the case, the reality is that they are breeding companion animals, not only dogs for themselves, but as companion animals for others.

This research has found that it is not the commercial aspects of breeding that is not tolerated by dog owners. It is breeding practices that compromise on dog health. Breeders should be free to pursue whatever objectives that they seek and there is economic thinking that in the long run businesses should be mindful of using their resources effectively to create profit. Breeders should be free to consider the financial implications of breeding as long as they breed in ways that ensure good welfare outcomes for all dogs and good outcomes for buyers. It is the role of

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<sup>54</sup> Roger Brownsword, 'Responsible Regulation: Prudence, Precaution and Stewardship' (2011) 62(5) *Northern Ireland Legal Quarterly* 573, 574.

regulation to ensure that those that do breed do so within '*the rules of the game*'.<sup>55</sup> In the case of breeding; the game is the production of healthy, temperamentally sound dogs sold to owners that understand what those dogs need to live happy long lives.

This research calls for a reconsideration by the ANKC and the State and Territory canine association of the inclusion of clauses in their codes that discourage commercial breeding. Dog buyers seek choice and the ability to purchase well-bred purebred dogs, so breeders should be free to breed commercially provided that they do so in compliance with a framework or rules that ensure they breed responsibly.

### PART III. CHAPTER SUMMARY

This Chapter provided a framework for change to the current regulatory environment. This has included a consideration of the changes that are needed to make it more responsive. A number of regulatory changes are called for including: the licensing of dog breeders; the implementation of an effective enforcement strategy; mandatory genetic testing and disclosures and the introduction of an approved breeders' scheme. A number of non-regulatory changes are called for including: the provision of more effective educational programs and material for both breeders and owners; an expanded role for the ANKC and acceptance by them of the reality that their breeders do breed commercially and that this benefits the community generally.

There is a role for regulation in ensuring that breeding dogs and puppies are accorded high levels of care and welfare. This research confirms that more regulation is not the answer to eliminating puppy farms and ensuring breeder accountability. What is required is a more responsive regulatory environment where the regulatory actors: work together to solve issues; promote animal welfare standards and; determine collectively what regulatory and non-regulatory mechanism and techniques should exist within the regulatory space. These regulatory actors also need to establish, maintain, monitor and enforce appropriately drafted regulation within appropriate enforcement and compliance programs.

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<sup>55</sup> Milton Friedman, *Capitalism and Freedom* (University of Chicago Press, Fortieth Anniversary Edition ed, 2002), 133.

## CHAPTER 11: CONCLUSION

### PART I. INTRODUCTION

This Chapter provides a summary of recommendations, summarises the contributions made by this research, evaluates the research methods that were adopted, confirms the research limitations and proposes scope for further research.

### PART II. SUMMARY OF RECOMMENDATIONS

This research confirms that stakeholders are aware that a number of issues exist in dog breeding in Australia. Stakeholders believe that regulation both plays a role in addressing the issues and is, in its current form one of the current issues. They are concerned it is inconsistent across States and Territories, and ineffectively monitored and enforced. There is a role for both State and industry breeding codes. A move towards a more responsive regulatory framework is suggested by this research, an approach where both State and industry regulatory actors play a role and acknowledge the role played by the other. Breeders of pure breed registered dogs can be regulated by their State or Territory canine association, with consistent national rules as agreed by the ANKC and then adopted by each State or Territory canine association. Other breeders can be regulated through the use of both licensing and the implementation of breeding codes.

Chapter 10 sets out several recommendations for change that is both regulatory and non-regulatory in nature. The fundamental regulatory changes suggested in Chapter 10 are:

- the establishment of a licensing scheme for all breeders that are not registered breeders of pure breed dogs, who are already registered and regulated by their State or Territory canine association. For these breeders it is suggested that their State or Territory canine associations establish an approved breeders' scheme that is backed up by appropriate inspections and assurances. This will provide those registered pure dog breeders that are willing to genetically test all breeding dogs and to have their breeding premises regularly inspected, to hold themselves out as assured breeders.

- The establishment of State based breeding codes in all States and Territories. These codes need to be supported by appropriate enforcement and inspection functions. Codes could be put in place in line with the code that has existed in Victoria for the last 4 years. Each State and Territory should ensure that their codes remain consistent with best dog welfare practice and they should make all breeders aware of their obligations under these codes.
- The establishment of a nationally consistent identification and registration system for all dogs produced by all breeders.
- The establishment of mandatory disclosure obligations for all breeders, backed up by appropriate sanctions to ensure all breeders provide adequate information and support to those that acquire their dogs. Dog owners need to be made aware of their obligations and responsibilities as dog owners.
- A recognition that hobby breeders do sell their puppies and are therefore commercial breeders and need industry codes that allow and support high quality commercial breeding of pure breed dogs. Such codes need to be supported by effective oversight and enforcement.

The fundamental non-regulatory change that was considered in Chapter 10 was an expansion of the role played by the State and Territory canine associations and the ANKC. It is estimated that less than 20% of dogs born in Australia are produced by registered pure breed breeders. There is great scope for these organisations to use education and advocacy to educate potential puppy buyers about their choices and responsibilities when looking for a new puppy. This research does not dismiss the role that rescue organisations play and the great desire that potential owners have to rescue dogs in need. With the establishment of more effective regulation reducing the ability for puppy farms to flourish and with the increased use of mandatory seller obligations there should be less dogs in need of rescue.

## PART III CONTRIBUTIONS AND EVALUATION

### 1. Contribution

This doctrinal socio legal research makes a theoretical and practical contribution and has relevance in both contexts. It makes an original practical contribution to the studies of animal welfare regulation by examining the issues facing dog breeding in Australia. Legal scholars such as Bruce acknowledge that there can be a challenge that must be addressed around how practical legal, regulatory and institutional processes can be used to close the gap between how the public perceive animal industry practice and its reality. This thesis addresses this challenge by examining perceptions and realities around dog breeding and the role regulation can play in closing this gap.<sup>1</sup>

It makes another practical contribution by taking up the opportunity identified by King, Marston and Bennett who assert that change is needed in relation to pure breed dog breeding. As identified by them '*what is needed is some systematic attempt to promote the breeding of pure breed dogs with the temperament and behavioural predispositions best suited to the role of the companion dog*'.<sup>2</sup> This research makes a contribution in this area by collecting data from both dog owners and dog breeders around the importance owners and breeders place on owning and breeding dogs with sound temperaments, and by recognising the role that regulation can play in relation to the supply and demand for dogs and in improving breeder accountability.

This thesis makes a theoretical contribution in the field of regulatory studies, by using a responsive regulatory approach to assess the effectiveness and role of regulation in addressing the social justice issues of canine health and welfare.<sup>3</sup> The use of this approach adds to the regulatory theory literature and to the literature that considers ways to improve outcomes in

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<sup>1</sup> Alex Bruce, *Animal law in Australia: An Integrated Approach* (LexisNexis Butterworths, 2012), 67.

<sup>2</sup> T King, L C Marston and P C Bennett, 'Breeding Dogs for Beauty and Behaviour: Why Scientists Need to do more to Develop Valid and Reliable Behaviour Assessments for Dogs kept as Companions' (2012) 137(1-2) *Applied Animal Behaviour Science* 18, 5.

<sup>3</sup> Mike Radford, *Animal Welfare Law in Britain: Regulation and Responsiveness* (Oxford University Press 2001), 168.

industries that have not yet been examined by responsive regulatory theorists. These outcomes are both of theoretical and practical relevance. If adopted they have the potential of improving outcomes for breeding dogs, dogs produced by regulated breeders and for those who acquire such dogs.<sup>4</sup>

This work contributes further by recognising the need for regulatory research in Australia that takes a socio legal approach and examines the form, scope and effectiveness of regulation and those that enforce it.<sup>5</sup>

## 2. Evaluation

This research has set out ways for evaluating the methods adopted in Part V of Chapter 5. Evaluation of research provides an opportunity to reflect on the research process and findings. Evaluating the research against a pre-determined set of criteria ensures that the research methods have been systematic. The criteria of validity and reliability are utilised in this research.

This research sought to obtain the perceptions of the stakeholders on the issues in dog breeding and their views on the regulatory environment. The data that was obtained has been accurately collected and coded in accordance with the empirical methods set out in Chapter 5. The selection of key words and their use, in both the NVivo and the manual coding processes has enabled the data to be coded in accordance with the processes set out in Figure 3 in Chapter 5. Adherence to this process ensured that all controls were put in place to minimise errors in data coding and interpretation.

This research has employed several methods to obtain data. The findings obtained corroborate each other as has been detailed in the research finding Chapters. The use of triangulation has

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<sup>4</sup> Christine Parker, 'Twenty Years of Responsive Regulation: An Appreciation and Appraisal' (2013) 7 *Regulation and Governance* 1, 9.

<sup>5</sup> The researcher adopts the view that socio legal scholars seek to examine the role and place of law within the realms of social, political and economic life. Philippe Nonet and Philip Selznick, *Law & Society in Transition: Towards Responsive Law* (Transaction Publishers 4th ed, 2009), vii and Reza Banaka, 'Having One's Cake and Eating it Too: The Paradox of Contextualism in Social-Legal Research' (2011) 7(4) *International Journal of Law in Context* 487, 487.



provided a contextual portrayal of the issues in dog breeding and the role of regulation in addressing them. Where data is not considered robust, such as the case with data set 3, the State and Canine Association survey, the limitations of the data set have been identified and detailed.

Both the coding in NVivo and the manual coding took place over a number of months. There was therefore a requirement to ensure that the processes used over this time to code (and therefore allow an analysis of the data to take place) had been conducted carefully and consistently over the period of the coding. This was achieved by adopting a process of checking the coding that had taken place whenever the researcher had gone back to coding data that was not coded in one sitting. Whenever there was a break of more than 2 days the researcher would start the coding process by recoding the last data that was coded on the previous session. This process would last for not less than 2 hours to ensure intra-coding reliability.<sup>6</sup>

#### PART IV. LIMITATIONS

This research has collected data using surveys. Arnott and others, in another Australian canine research project, recognise that survey research that asks participants to self-report can be affected by both intentional and unintentional errors, recall ability and an unwillingness to report accurately.<sup>7</sup> This is recognised with the dog owner and dog breeder surveys. Dog owners were asked to provide historical data such as price paid and how long they had owned their most recently acquired/purchased dog. Dog breeders were asked to provide information on litters bred in the past and on the provision of assistance to puppy buyers. This data is therefore subject to recall bias, self-selection bias and 'willingness to tell' bias but this was not integral to this research as this research was seeking to collect data from stakeholders around their perceptions and opinions.

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<sup>6</sup> Jennifer Mason, *Qualitative Researching* (Sage Publications Ltd 2014), 187.

<sup>7</sup> ER Arnott et al, 'Estimating the Economic Value of Australian Stock Herding Dogs' (2014) 23 *Animal Welfare* 189, 5.

## PART V. SCOPE FOR FURTHER RESEARCH

This research has considered the role and effectiveness of regulation in dog breeding. As this research was conducted, a number of other areas of interest were revealed. This section provides a summary of the areas in which this research could be expanded.

### 1. Viability of Commercial Dog Breeding

Commercial dog breeding was considered in Chapter 9. This research has revealed that dog owners are against puppy farmers but not commercial breeding that ensures that dog welfare is fully considered. This raises the question at a policy level. Currently there is legislation that supports commercial breeding of farm and food animals but the notion of commercially breeding companion animals appears to be of concern to a number of stakeholder groups. A decision needs to be made on the benefits of having sustainable commercial dog breeding in Australia.<sup>8</sup> Should there be a benefit, then regulation needs to support commercial dog breeding. Should commercial dog breeding not be supportable then regulation should exist that supports the hobby of dog breeding. More understanding around the viability of sound commercial dog breeding practices is needed.

### 2. Regulation by Code versus Regulation by Legislation

In May 2017 amendments to the *Animal Management (Cats and Dogs) Act 2008* (Qld) became effective in Queensland.<sup>9</sup> This Act was changed following a long process of consultation with stakeholder groups, and it imposes obligations on dog breeders and those who supply dogs in terms of how they advertise dogs for sale and in relation to the information that they must provide when they sell dogs. The research that has been undertaken for this doctrinal thesis was conducted prior to the implementation of this new regulation. The impact of this regulation, and a comparison of its effectiveness in comparison with the codes that exist in New South Wales

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<sup>8</sup> There is literature that considers the viability of other commercial animal industries such as the kangaroo industry. Such literature has concluded that consideration needs to be given to the benefit the industry provides in light of animal welfare and ecosystem considerations. Keely Boom et al, 'Pest' and Resource: A Legal History of Australia's Kangaroos' (2012) 1(1) *Animal Studies Journal* 17, 18.

<sup>9</sup> *Animal Management (Cats and Dogs) Act 2008* (Qld).

and Victoria, is an area of further research that would be useful. It is important to consider which type of regulation is more effective.

### 3. Future Role of ANKC and State and Territory Canine Associations

Currently the ANKC and State and Territory canine associations play a minimal role in ensuring that members comply with codes. All but Dogs NSW play no role in inspecting or monitoring the breeding facilities of registered breeders. A consideration of the role these industry bodies may play into the future is warranted. Research into how the ANKC could become an effective governing body overseeing registered breeding in Australia could be undertaken in conjunction with and with the support of the ANKC.

### 4. Dog Overpopulation

The results in Chapter 8 that considered dog overpopulation raised the question of how many registered pure breed dogs end up in pounds or shelters? A full analysis of the answers to question 38 in the dog owner survey would provide some further insight into this, and this could be researched more fully.

### 5. Examination of ACT Breeder Licencing Scheme

A breeder licensing scheme became effective in the ACT late in 2015, after the majority of the data used in this research was collected. The impact of this scheme and its impact on improving outcomes for dogs is an area for future research.

### 6. Economic Impacts of Increasing Regulation

The reality that imposing more regulatory obligations on registered breeders may increase the costs that those breeders face to breed pure breed dogs and how these costs will increase the cost divide for dog owners of buying a dog from a registered breeder as opposed to a dog born outside of that regulated environment was discussed in Part IV of Chapter 9. There is scope for study that examines the economics of both regulated and unregulated dog breeding.

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## Appendix 1 - Case Law Analysis

### Introduction

To develop a full picture of the current issues in commercial and hobby dog breeding and the role that regulation can play in addressing the issues, it is both necessary to examine the case law that exists in Australia in relation to dog breeding and the rights of dog buyers (consumers). This was both an appropriate and necessary step to enable the commentary on the effectiveness or otherwise of the current regulatory framework in terms of the protection it offers to dog buyers and the obligations it imposes upon dog sellers.

The literature review conducted as part of this thesis that is summarised in Chapter 3 limited itself to considering animal welfare, animal rights, dog management and dog behaviour literature. This literature review was not specifically conducted with the intention of guiding the subsequent case law analysis that is recorded in this Sub-Chapter. During the course of the literature review a number of articles were reviewed that did consider case law, chiefly centred around the ownership and property status of dogs. This literature confirmed that cases that consider ownership are typically commenced by either owners where the value of their dog has been diminished or by people or local councils where dogs have caused or threatened to cause damage to other animals, people or property. The literature also revealed that another growing area of case law is cases where the ownership of companion animals is disputed in divorce/dissolution cases.<sup>1</sup>

Whilst this literature is interesting the cases reviewed within the literature revealed little about the welfare of dogs kept for dog breeding in Australia or the rights of dog buyers and owners against dog breeders and dog sellers when dog buyers purchase dogs that have defects such as a physical or genetic issue reducing the dog's lifespan or quality of life.

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<sup>1</sup> Steven White, 'Companion Animals: Members of the Family or Legally Discarded Objects?' (2009) 32(3) *University of New South Wales Law Journal* 8523, 853 and Steve Cooke, 'Duties to Companion Animals' (2011) 17(3) *Res Publica* 261, 262 and Michael Ploudre Kaiser, '"Cut the Dog in Half": Resolving Animal Law Disputes Through the Use of Alternative Dispute Resolution' (2014) 15(1 - Fall 2013) *Cardozo Journal of Conflict Resolution* .

## Aim

The major aim of the case law analysis was to consider to what extent the Australian Courts provide a means of protecting dog buyers in the context of dog breeding in Australia.<sup>2</sup>

From this major aim the following three sub aims were considered as the search process commenced:

- Identification of the types of cases that had been decided in Australia in relation to dogs and consumers,
- To determine what cases there were in relation to both commercial and hobby dog breeding, and
- To identify cases where purchasers/consumers of dogs had used the legal system to seek a remedy when the puppy they had purchased was defective.

As the search continued, alongside the ongoing literature review process the researcher developed 3 themes that became the focus of the analysis:

1. Does the law ever consider dogs to be more than mere property? What is the effectiveness of the current regulatory framework in protecting dog owners when the dog they buy suffers from a genetic, behavioural or health issue or defect?
2. What is the courts approach when a dog does have a defect or illness present at the point of sale?
3. What do dog breeders say motivates their breeding, do they view it as a hobby or a commercial enterprise?

## Method

Case law analysis was undertaken using three of the most extensive and commonly used Australian case law databases; Austlii, Lexis Nexis Au and Westlaw. The use of electronic

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<sup>2</sup> The role that courts can play in improving outcomes for animals has been examined in the UK; see for example the article by Calley. Darren Calley, 'Developing a Common Law of Animal Welfare: Offences Against Animals and Offences Against Persons Compared' (2011) 55(5) *Crime, Law & Social Change* 421.

databases such as Westlaw, Austlii and Lexis Nexis allows researchers to view cases in a more consistent way and saves researchers time and reduces human error.<sup>3</sup>

To ensure that a comprehensive examination of the relevant case law was conducted to inform this research a number of case law searches were conducted over a two-year period. These searches were intended to capture cases around dog breeding, the rights of dog owners when purchasing their dog (in particular the cases where the court had been asked to consider the rights of owners of puppies with defects).

The case law analysis took place over the period July 2013 to June 2015. Over this period 12 different sets of search terms were searched across the Westlaw Au, Lexis Nexis AU and Austlii legal databases.

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<sup>3</sup> James F Anderson, Kelley Reinsmith-Jones and Nancie J Mangels, 'Need for Triangulated Methodologies in Criminal Justice and Criminological Research: Exploring Legal Techniques as an Additional Method' (2011) 24(1) *Criminal Justice Studies* 83, 100.

### Summary of Database Searches Conducted

Search Terms	Westlaw AU	No. of Cases	Austlii	No. of cases	Lexis Nexis	No. of cases	Total Cases
Dog AND Breed AND Defect	22 July 2013	42	3 July 2014	44 (2 new)	3 March 2015	44(5 new)	49
Canine AND Defect AND Consumer			31 July 2013	13	2 March 2015	11 (1 new)	14
Dog AND Consumer AND Breed	15 Oct 2013	27			4 March 2015	28 (1 new)	28
Dog AND Breeding	26 Nov 2013	217			7 March 2015	218 (98 new)	315
Canine AND Breed	28 January 2014	25			8 March 2015	24 (4 new)	29
Dog AND Defect AND Consumer AND Purchase	30 January 2014	43			9 March 2015	42 (15 new)	58
"Breeding Facility"	1 July 2014	6			10 March 2015	4	10

"Puppy Farm"	2 July 2014	1			11 March 2015	1	1
"Dog Breed"	4 July 2014	6			12 March 2015	14 (5 new)	11
Puppy AND Consumer	5 July 2014	21	29 June 2015	45 (38 new)			59
Dog AND Breeder AND Refund	5 March 2015	6 (5 new)	4 August 2014	17			22
"Commercial dog breeding"	6 March 2015	1 (not new)	26 August 2014	4			4
<b>Total Cases Reviewed</b>							<b>600</b>

## Results

In total 600 Australian cases were reviewed over a 56-year period from 1959 (the earliest cases in the databases) to 2015. After excluding cases that were brought up by the searches more than twice, and cases where an issue about a dog was not central or relevant (and removing those cases that considered the Greyhound Racing Industry) a total of 120 remained.

These 120 cases were then identified as belonging to one of the four components of dog law that were identified in Chapter 3. The fourth component which comprises regulation around dog breeding and selling including pure breed dog breeding has been broken down into these two components in the categorisation process. A fifth component 'Assistance Dogs' was added as it was decided it was necessary to categorise these cases that did not sit firmly in any of the four components.

No filtering was undertaken in relation to practice area or jurisdiction in recognition that dogs may not have a high financial value and that the issues surrounding dogs may be litigated in various courts and tribunals. Therefore, cases from Administrative Tribunals, Land and Environment Courts, District Courts, Supreme Court, Courts of Appeal, and the High Court were all considered in the analysis.

### Categorisation of Cases

Category	Number of cases identified
Dog Ownership Cases	8
Dog Management Cases	83
Dog Welfare (and anti-cruelty) Cases	5
Dog Breeding and Selling Cases	13
Pure Breed Dog Showing Cases	7
Assistance Dogs	4
<b>TOTAL</b>	<b>120</b>

### Summary of the Cases Found in the Case Law Analysis

	Total	Cases are listed within their sub groups chronologically
<b>Ownership of Dogs</b>	8	<p>Orders seeking the return of a dog from another – 4</p> <ul style="list-style-type: none"> <li>- Guilfoyle v Newman [2004] QDC 316</li> <li>- Atkins v Cooper [2008] NSWSC 1077</li> <li>- Ackland v Watt (Civil Claims) VCAT 1626 (5 October 2010)</li> <li>- Harvey v Davis [2014] QCATA 131</li> </ul> <p>Family law cases – seeking the value of dogs, dog business to be considered as a contribution, the costs of kennelling dogs as an expense or orders to be made about ownership of dogs in settlement orders – 4</p> <ul style="list-style-type: none"> <li>- Pippas v Pippas [2008] FamCA 542</li> <li>- Benford v Benford [2012] FMCAfam 8</li> <li>- Goldstein v Goyle [2012] FamCAFC 149</li> <li>- George v Perkins [2012] FamCA 346</li> </ul>
<b>Management of Dogs</b>	83	<p>Dog attack, dog bite, dangerous dog and restricted breeds – 30</p> <ul style="list-style-type: none"> <li>- Patricia Mary Frances Olsen v Costa Loizou [1996] SASC 5961</li> <li>- Giovanni Pacino &amp; Ors v The Queen [1998] WASCA 335</li> <li>- Pacino v The Queen (1998) 105 A Crim R 309</li> <li>- Stockwell v State of Victoria [2001] VSC 497</li> <li>- Serbanescu v Herter [2004] VSC 358</li> <li>- Gubbins v Wyndham City Council [2004] VSC 238</li> <li>- Salmon v Town of Cottesloe [2004] WASCA 66</li> <li>- Overend v Hobsons Bay City Council [2005] VCAT 226</li> <li>- Clare &amp; Glibert Valleys Council v Crawford [2005] SADC 135</li> <li>- Gill v Clarence Valley Council [2006] TASSC 112</li> <li>- Nicholson v Mornington Shire Council [2007] VSC 329</li> <li>- Frost v Shire of Kalamunda [2007] WASC 322</li> <li>- Walls v Cooper [2008] WASCA 53</li> <li>- Reed v Sretenovic &amp; Anor [2008] NWSCC 202</li> <li>- Tarasinski v Wyndham City Council [2009] VSC 109</li> <li>- Chivers v Gold Coast City Council [2010] QSC 98</li> </ul>



		<ul style="list-style-type: none"> <li>- Thurstan v Ballarat CC &amp; Anor (General) [2012] VCAT 274</li> <li>- Zivaljevic V Hume CC (General) [2012] VCAT 1558</li> <li>- Kuehne v Warren Shire Council [2011] 180 LGERA 383</li> <li>- Pritchard v Commonwealth Insurance Ltd [2007] SADC 104</li> <li>- Dudas v Monash City Council [2012] VSC 578, [2012] VSC 578</li> <li>- Johnson v Buchanan [2012] VSC 195, (2012) 223 A Crim R 132</li> <li>- Simon v Condran [2013] NSWDC 32, (2013) 16 DCLR(NSW) 230</li> <li>- Appleby v Monash City Council [2013] VSC 282</li> <li>- Keefe v McLean- Carr (1993) Aust Torts Rep 81 – 224</li> <li>- Isbester v Knox City Council [2014] VSCA 214</li> <li>- Gray V Brimbank City Council [2014] VSC 13</li> <li>- Galea V Gillingham [1987] 2 Qd R 365</li> <li>- Management Pty Ltd Carrying On A Business as McMahon Waste Disposals SCGRG-90-2598, S3831</li> <li>- Collins v Carey &amp; Ors [2003] QCA 291</li> </ul> <p>Body Corporate and Tenancy – 11</p> <ul style="list-style-type: none"> <li>- Beetham, Wendy Anne v Repetylo, Osyp (Joe) [1998] NSWRT 242</li> <li>- Edwards, Job Anthony &amp; Patricia May [1999] NSWRT 59</li> <li>- Villa Estoril [2004] QMCCM CMR 248</li> <li>- Ephraim Island – Subsidiary 1005 [2007] QBCCM Cmr 205</li> <li>- Scholars Cover [2011] QBCCM Cmr 310</li> <li>- Owners of Strata Plan 56117 v Drexler [2013] NSWDC 67, (2013) 16 DCLR(NSW) 261, 2 STR(NSW) 1</li> <li>- NSW Land &amp; Housing Corporation v Christodoulou – BC201340123 New South Wales District Court</li> <li>- Tang v Owners Corporation SP 71379 (Strata and Community Schemes) [2011] NSWCTTT 160</li> <li>- NSW Land &amp; Housing Corporation v Christodoulou [2013] NSWDC 81</li> <li>- Drexler v The Owners Corp SP 56117 (Strata and Community Schemes) [2012] NSWCTTT 338</li> <li>- Montagna v Owners Corporation (Strata &amp; Community Schemes) [2003] NSWCTTT 783</li> </ul> <p>Keeping of Dogs and Nuisance/ Council Rights to take dogs – 16</p> <ul style="list-style-type: none"> <li>- Conroy v Shire of Springvale &amp; Noble Park [1959] VR 737, 20 LGRA 100, [1959] ALR 1314</li> <li>- Willoughby Municipal Council v Winterbottom (1979) 40 LGRA 180</li> <li>- Shannon v Lithgow City Council (1995) 88 LGERA 253</li> <li>- Fisher v Ellerton [2001] WASCA 315</li> </ul>
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<b>Welfare and Cruelty Cases</b>	5	<p>Cases questioning the RSPCA's right to seize dogs and keep dogs –</p> <ul style="list-style-type: none"> <li>- Robertson v Vlahos [2011] QCA 24</li> <li>- Robertson v Hollings [2009] QCA 303 Robertson v Hollings (No 2) 2011] QSC 37</li> <li>- Hunter v RSPCA WA Inc 2008] WASC 153 then [2011] WASC 363</li> <li>- Armstrong v Reksmiss [2014] WASC 134</li> </ul> <p>Anti-cruelty cases - 2</p> <ul style="list-style-type: none"> <li>- Dart v Singer [2010] QCA 75</li> <li>- Hodgens v Gunn; Hodgens, Ex p [1990] 1 Qd R 1, 68 LGRA 395, 18 ALD 536</li> </ul>
<b>Dog Breeding and Selling Cases</b>	13	<p>Buyers pursuing the costs from breeders for defective or sick dogs or Consumer Commission taking action to enforce undertakings by a breeder breeding poor quality and sick puppies – 13</p> <ul style="list-style-type: none"> <li>- Knowles v Atkinson (General) [2002] NSWCTTT 224 (30 June 2002)</li> <li>- Lee V Zalac [2003] NSWCTTT 362</li> <li>- Anderson v Zalac T/as Tuxzat Kennels (General) [2003] NSWCTTT 580 (17 August 2003)</li> <li>- Dodge v Rockey (General) [2005] NSWCTTT Consumer Trader and Tenancy Tribunal</li> <li>- Desmond v Stopp (General) NSWCTTT 383 (11 July 2006)</li> <li>- Jones v Planhaven Kennels (General) [2009] NSWCTTT 566</li> </ul>

		<ul style="list-style-type: none"> <li>- Commissioner for Consumer Protection v Armstrong [2012] WASC 206 <sup>1</sup></li> <li>- Scardoni &amp; Davis (Civil Dispute) [2013] ACAT 35 (17 May 2013)</li> <li>- Allen v O'Loughlin [2014] NSWCATCD 21</li> <li>- Maslij v Attard trading as Chevromist (Civil Claims) 2014] VCAT 719 (10 June 2014)</li> <li>- Sobol v Planhaven Kennels (General)) 2011 [2011] NSWCTTT 144</li> <li>- The Commission for Consumer Protection v Armstrong [No 2] [2014] WASC 167</li> <li>- Gardner v James (Civil Claims) [2015] VCAT 169</li> </ul>
<b>Regulation of Dog Showing</b>	7	<p>Suspension from Showing of a dangerous dog – 1</p> <ul style="list-style-type: none"> <li>- Glenn Smith v Royal NSW Canine Council Ltd [2010] NSWSC 1134</li> </ul> <p>Procedural issues with a canine association - 6</p> <ul style="list-style-type: none"> <li>- Mitchell v Royal New South Wales Canine Council Limited [2001] NSWCA 162</li> <li>- Heale v Phillips [1959] Qd R 489</li> <li>- Howie v Royal New South Wales Canine Council Ltd [2006] NSWSC 565</li> <li>- Sunn v Japanese Chin Club [2000] NSWSC 621</li> <li>- Furber v Royal NSW Canine Council Ltd and Anor Matter No 20416/98 [1998] NSWSC 668</li> <li>- Spagnolo v Slatyer BC92039</li> </ul>
<b>Dogs in Sport and Service (excluding dog showing)</b>	4	<p>Human rights – to keep a companion dog to ameliorate the applicant's psychological state</p> <ul style="list-style-type: none"> <li>- Ondrich v Kookaburra Park Eco Village [2009] FMCA 260, (2009) 227 FLR 83, [2010] ALMD 315</li> </ul> <p>Dogs used in Sambar hunting – interesting as reference made to breed standards</p> <ul style="list-style-type: none"> <li>- McNeill v Department of Sustainability &amp; Environment [2005] VCAT 1871, (2005) 23 VAR 363, [2007] ALMD 7068</li> </ul> <p>A personal injury claim for a quadriplegic for an assistance dog</p> <ul style="list-style-type: none"> <li>- Beck v New South Wales [2001] NSWSC 278</li> </ul> <p>Seeking the right to live with a hearing dog, questions of its hygiene by others</p> <ul style="list-style-type: none"> <li>- Owners of Strata Plan 56117 v Drexler [2013] NSWDC 67, (2013) 16 DCLR(NSW) 261, 2 STR(NSW)</li> </ul>

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<sup>1</sup> There were five cases in total by or against a prolific commercial breeder Faye Armstrong over the period 2012 – 2015. These cases have been recorded not five times but twice as the five cases were all interrelated but did involve a number of different buyers, offences and sick puppies.

## Appendix 2 – Chronology of Regulation of Dog Breeding in Australia

Chronological History of Dog Breeding in Australia				
Date	Jurisdiction	Type	Description	Notes
1895	SA	Legislation	<i>Sale of Goods Act 1896 (SA)</i>	
1895	WA	Legislation	<i>Sale of Goods Act 1895 (WA)</i>	
1896	Qld	Legislation	<i>Sale of Goods Act 1896 (QLD)</i>	
1896	Tas	Legislation	<i>Sale of Goods Act 1896 (Tas)</i>	
1901	Cth	Legislation	<i>Customs Act 1901 (Cth)</i>	
1903	WA	Legislation	<i>Dog Act 1903 (WA)</i>	
1923	NSW	Legislation	<i>Sale of Goods Act 1923 (NSW)</i>	
1925	Qld	Legislation	<i>Animals Protection Act 1925 (Cth)</i>	Superseded by <i>Animal Care and Protection Act 2001 (Qld)</i>
1954	ACT	Legislation	<i>Sale of Goods Act 1954 (ACT)</i>	
1956	Cth	Regulations	<i>Customs (Prohibited Imports) Regulations 1956</i>	Restricted importation of Pitbull Terriers, Japanese Tosas, Argentinian and Brazilian Fighting Dogs and Perro de Presa Canario (and related breeds), as well as hybrid breeds.
1958	Vic	Legislation	<i>Goods Act 1958 (Vic)</i>	
1972	NT	Legislation	<i>Sale of Goods Act 1972 (NT)</i>	
1974	Cth	Legislation	<i>Trade Practices Act 1974 (Cth)</i>	
1976	WA	Legislation	<i>Dog Act 1976 (WA)</i>	
1976	WA	Legislation	<i>Dog Regulations 1976 (WA)</i>	
1979	Cth	Code of Practice	Establishment of Pet Industry Association of Australia	Establishment of trade-only Association in Australia, who have imposed a national Code of Practice on all members, which exceed the minimum standards imposed by regulation.
1979	NSW	Legislation	<i>Prevention of Cruelty to Animals Act 1979 (NSW)</i>	
1980	Cth	Code of Practice	<i>Model Codes of Practice for the Welfare of Animals</i>	Developed by National Sub-Committee on Animal Welfare (now Animal Welfare Working Group)
1982	Cth	Legislation	<i>Export Control Act 1982 (Cth)</i>	
1982	Cth	Parliamentary Inquiry	Senate Select Committee on Animal Welfare (established)	Operated from 1982-1990, established by Senator Don Chipp (Dem, Vic) and Senator George Georges (ALP, Qld) produced 8 reports

1985	SA	Legislation	<i>Animal Welfare Act 1985 (SA)</i>	<div> Later named 'Australian Animal Welfare Advisory Committee', designed to advise the Minister for Agriculture and Standing Council on Primary Industries on Animal Welfare matters  Dissolved in 2013 budget </div>
1986	Vic	Legislation	<i>Prevention of Cruelty to Animals Act 1986 (Vic)</i>	
1987	Cth	Consultation	National Consultative Committee on Animal Welfare established	
1987	NSW	Legislation	<i>Fair Trading Act 1987 (NSW)</i>	
1987	SA	Legislation	<i>Fair Trading Act 1987 (SA)</i>	
1987	WA	Legislation	<i>Fair Trading Act 1987 (WA)</i>	<ul style="list-style-type: none"> <li>- Amended regularly since 1996, last amended July 2015</li> <li>- Members are obliged to ensure the health, safety and wellbeing of any dog within their control, over which they exercise control, or any dog which is currently in distress (rr 5-7)</li> <li>- Members are obliged to breed primarily for the purpose of improving the health or attributes of the breed, and not primarily for the pet or commercial market (r 11)</li> <li>- Members are not to breed animals before reaching a minimum level of maturity, and must meet a number of standards prohibiting 'inter-breeding' and overbreeding (rr 12-16)</li> <li>- Members must not transport puppies below the age of 8 weeks, or export puppies below the age of 11 (rr 17-18, 27)</li> <li>Members must ensure that animals are only transferred to those able and willing to care for them (rr 18-21)</li> </ul>
1988	Tas	<a href="#">Code of Practice</a>	<b>Industry Code and Regulations</b> - Dogs Tasmania (Tasmanian Canine Association Inc) - Regulations and Code of Ethics	
1989	Qld	Legislation	<i>Fair Trading Act 1989 (Qld)</i>	
1990	NT	Legislation	<i>Consumer Affairs and Fair Trading Act 1990 (NT)</i>	
1990	Tas	Legislation	<i>Fair Trading Act 1990 (Tas)</i>	
1992	ACT	Legislation	<i>Animal Welfare Act 1992 (ACT)</i>	
1992	ACT	Legislation	<i>Fair Trading Act 1992 (ACT)</i>	
1993	Tas	Legislation	<i>Animal Welfare Act 1993 (Tas)</i>	
1994	Vic	Legislation	<i>Domestic Animals Act 1994 (Vic)</i>	

1994	Vic	<a href="#">Code of Practice</a>	<b>Industry Regulations and Code</b> - Dogs Victoria (Victorian Canine Association Inc) - Regulations Codes, Policies and Procedures (Codes)	<p>Amended and revised regularly, last updated October 2015</p> <p>All members of the Victorian Canine Association agree to comply with various Codes of Practice contained in Part 20 of the Association's Constitution, requiring, inter alia</p> <p>Requires members to ensure the adequate treatment of any animals in their care (20.1.5), breeding primarily for the working ability and/or quality of the breed (20.1.11), minimum requirements for breeding maturity and mating age, and periods between whelping (20.1.12-20.1.14)</p> <p>Code of Practice for Hereditary Diseases requires members to take responsible action to reduce the incidence of hereditary diseases in their breed, and comply with any control programs approved by the Victorian Canine Association. (20.3)</p>
1995	SA	Legislation	<i>Dog and Cat Management Act 1995 (SA)</i>	
1995	NSW	<a href="#">Code of Practice</a>	<b>Industry Code</b> - Dogs NSW - Code of Ethics	<p>Amended July 2013, November 2013, April 2014, July 2014, June 2015</p> <p>All members of Dogs NSW are required to comply with Code of Ethics amended June 2015</p> <p>Requires, inter alia, that all members to breed only for the purpose of betterment of the breed (r 6), and breeding only of animals which have reached an adequate maturity age (r 7)</p> <p>Animals are not to be whelped more than twice in two years without special approval (rr 8-9), nor more than six times in a life time (r 10), or with a close relation (r 11), or impure species (rr 12-13)</p> <p>All members' litters must be registered (r 14) and their membership number must be present in all advertisements (r 15), and must not be provided to pet stores or dealers (r 19).E37</p> <p>This is Part 13 of Dogs NSW Regulations</p>
1995	Cth	<a href="#">Code of Practice</a>	<b>Industry Code</b> - Australian National Kennel Council - <i>National Code of Practice for Hereditary Diseases</i>	<p>All members of each controlling body are bound to comply with Code of Practice, requiring breeders to take responsible action to reduce the incidence of hereditary diseases in their breeds (r 2(1)), comply with any approved control programs (r 2(2)), and test any breeding animals (r 2(3)).</p>
1995	Tas	Legislation	<i>Animal Health Act 1995 (Tas)</i>	

1996	Cth	<a href="#">Code of Practice</a>	<b>Industry Code</b> - Australian National Kennel Council Ltd (ANKC) - National Code of Ethics of Responsible Dog Ownership	<p>-Amended November 1996, May 1998, October 2000, October 2001, May 2005, October 2007, June 2008, October 2008, July 2011</p> <p>All members of the Australian National Kennel Council agree to comply with Code of Ethics.</p> <ul style="list-style-type: none"> <li>- Members shall not engage in any action 'contrary to the standards set by the community' (cl 2)</li> <li>- Members must ensure all dogs under their control are adequately treated and cared for (cl 5)</li> <li>- Members shall take all actions to positively enhance the reputation of dog breeders (cl 8) and must not participate in any action that involves cruelty to animals (cl 9)</li> <li>- Members must breed primarily for the purpose of improving their breed's quality/working ability (cl 11)</li> <li>- Members shall not breed bitches before maturity, or more than twice in 18 months/six times overall without veterinary certification (cl 12-14)</li> <li>- Members must maintain the purity of their breeds and reduce the incidence of hereditary diseases (cl 15-16)</li> <li>- Members shall not sell puppies below the age of 8 weeks in Australia, or 11 weeks through export, and never to a purpose other than improvement of the breed (cl 17-19)</li> <li>- All puppies must be registered within 18 months of whelping, and all information and support must be provided to the purchaser, who must obtain animals in the best state of health (cl 20-26)</li> </ul>
1996	NSW	<a href="#">Code of Practice</a>	<b>State Based Code</b> - Animal Welfare Code of Practice No 5 - <i>Dogs and Cats in Animal Boarding Establishments</i>	Superseded by the Code of Practice Animals in Pet Shops 2008
1996	NSW	Code of Practice	<b>State Based Code</b> - <i>The Care and Management of Breeding Dogs</i>	Passed pursuant to <i>Prevention of Cruelty to Animals (Animal Trades) Regulation 1996 (NSW)</i> , by NSW Department of Agriculture (Superseded)
1996	Vic	Code of Practice	<b>State Based Code</b> - <i>Original Code of Practice for the Operation of</i>	Superseded



			<i>Breeding and Rearing Establishments</i>	
1996	NSW	Regulations	<i>Prevention of Cruelty to Animals (Animal Trades) Regulation 1996 (NSW)</i>	
1996	NSW	Regulations	<i>Prevention of Cruelty to Animals (General) Regulation 1996 (NSW)</i>	
1996	NSW	<a href="#">Code of Practice</a>	<b>Industry Code</b> - Dogs NSW - Guidelines for the Care and Management of Keeping and Breeding Dogs (Revised 10 July 2013)	Based on the Code of Practice for all dog and cat breeders by virtue of the Animal Trades Regulations under the Prevention of Cruelty to Animals Act (POCTA) which came into force on 1.8.96 and revised July 2013. This is Part 14 of Dogs NSW Regulations E51
1997	Vic	Regulations	<i>Prevention of Cruelty to Animals Regulations 1997 (Vic)</i>	
1998	NSW	Legislation	<i>Companion Animals Act 1998 (NSW)</i>	
1999	SA	<a href="#">Code of Practice</a>	<b>State Based Code</b> - <i>Code of Practice for the Care and Management of Animals in the Pet Trade</i>	<ul style="list-style-type: none"> <li>- Mandates minimum requirements for food, health, safety and hygiene (cl 3)</li> <li>- Provides for minimum standards of cage size, space and exercise, and ensures that animals must be kept in temperature-controlled environments when the outside temperature exceeds 33 degrees (cl 4-9)</li> <li>- All equipment (incl. emergency management equipment) must be sufficiently safe and designed not to cause harm to animals (cl 10-13)</li> <li>- Breeders must maintain minimum standards of animal health, including thrice-daily feeding, handling, isolation of sick and injured animals, parasite control, vaccination etc. (cl 16-24)</li> <li>- Animals must not be sold under the age of 7 weeks, and must be able to independently sustain themselves at the time of sale (cl 23)</li> <li>- Minimum information must be provided to purchasers (cl 29)</li> </ul>
1999	Tas	<a href="#">Hansard</a>	Parliamentary Debates, 28 April 1999, Legislative Council (pages 3, 6, 21)	<ul style="list-style-type: none"> <li>- Consideration of reduction in funding for Tasmanian Racing Industry on breeding industry</li> </ul>

1999	NT	Legislation	<i>Animal Welfare Act 1999 (NT)</i>	
1999	Vic	Legislation	<i>Fair Trading Act 1999 (Vic)</i>	
1999	WA	<a href="#">Parliamentary Inquiry</a>	Parliamentary Petition - Animal Welfare Legislation	<ul style="list-style-type: none"> <li>- Presented to Legislative Council on 4 May 1999</li> <li>- 1291 Signatures urging the prohibition of any 'intensive breeding practices' limiting animals from expressing their behavioural needs</li> </ul>
2000	WA	<a href="#">Code of Practice</a>	<b>Industry Code and Regulations</b> - Dogs West (Canine Association of Western Australia Inc) - Code of Ethics and Regulations	<ul style="list-style-type: none"> <li>- Effective 1 January 2000.</li> <li>- Amendment March 2014, December 2014 and August 2015</li> </ul>
2000	ACT	Legislation	<i>Domestic Animals Act 2000 (ACT)</i>	
2000	Tas	Legislation	<i>Dog Control Act 2000 (Tas)</i>	
2000	SA	Regulations	<i>Animal Welfare Regulations 2000 (SA)</i>	
2001	Qld	Legislation	<i>Animal Care and Protection Act 2001 (Qld)</i>	
2001	ACT	Regulations	<i>Domestic Animals Regulation 2001 (ACT)</i>	
2001	ACT	<a href="#">Regulations</a>	<i>Animal Welfare Regulation 2001 (ACT)</i>	
2002	WA	Legislation	<i>Animal Welfare Act 2002 (WA)</i>	
2002	Qld	Regulations	<i>Animal Care and Protection Regulation 2002 (QLD)</i>	
2002	WA	Regulations	<i>Dog (Restricted Breeds) Regulations [No 2] 2002 (WA)</i>	
2003	Cth	Legislation	National Animal Welfare Bill 2003 (Cth)	Introduced by Senator Andrew Bartlett, Democrats - designed to create National Animal Welfare Authority, lapsed at conclusion of Parliament on 12 Feb 2008

2003	WA	Regulations	<i>Animal Welfare (General) Regulations 2003 (WA)</i>	
2004	Cth	<a href="#">Code of Practice</a>	<b>Industry Guidelines</b> - Australian National Kennel Council - Guidelines for Responsible Breeders	- National Guidelines for Dog Breeders, providing guidelines on breeding, genetics, dog selection, whelping and feeding and puppy socialisation and sales
2004	Tas	<a href="#">Hansard</a>	Parliamentary Debates, 23 November 2014, Legislative Council (pages 63-5, 78)	- Consideration of disallowance of Animal Welfare Regulations 2004, discussion of tail docking and dog breeding
2004	Cth	Regulations	<i>Customs (Prohibited Imports) Regulations 2004 [No. 3] (Cth)</i>	Empowers Minister to permit the importation of an otherwise restricted breed dog for scientific purposes, removing absolute prohibition on importation
2005	Cth	Code of Practice	<i>Australian Animal Welfare Strategy</i>	Superseded by 2008 revised edition
2005	Cth	Code of Practice	National Animal Welfare Bill 2005 (Cth)	Introduced by Senator Andrew Bartlett, Democrats - designed to create National Animal Welfare Authority, lapsed at conclusion of Parliament on 12 Feb 2008
2005	NSW	Legislation	<i>Crimes Amendment (Animal Cruelty) Act 2005 (NSW)</i>	
2005	Cth	<a href="#">Parliamentary Inquiry</a>	Petition: Registered Dog Breeds	Introduced by Brendan Nelson MP to the House of Representatives on 5 September 2005, signed by 12,470 citizens, calling for Federal Legislation to protect breeders' rights and representation
2005	Qld	<a href="#">Code of Practice</a>	<b>Industry Code and Rules</b> - Dogs Queensland (Canine Control Council, Queensland) - Rule Book and Code of Ethics (March 2010)	- Amended November 2006, July 2009, January 2010, March 2010 and March 2013 - All 'Accredited Breeders' in Queensland (registered by Dogs QLD) agree to comply with the code of ethics contained in this code of practice.
2012	Cth	Code of Practice	<b>Industry Code</b> - Master Dog Breeders (MDBA) Breeders Code of Conduct	All members of MDBA are required to comply with the organisation's Breeders Code of Conduct
2005	Vic	Regulations	<i>Domestic Animals Regulations 2005 (Vic)</i>	

2006	Cth	Consultation	Australian Animal Welfare Strategy: National Implementation Plan 2006-10	
2006	Cth	Consultation	First National Summit to End Pet Overpopulation	Commenced in June 2006, occurs biennially, organised by the Animal Welfare League of Queensland and the National De-sexing Network, and have increased pressure for breeder legislation, standards of care, inspection powers, micro-chipping and launched the 'Australia Getting to Zero' campaign.
2006	NSW	Regulations	<i>Prevention of Cruelty to Animals (General) Regulations 2006</i> (NSW)	
2007	Cth	Code of Practice	<b>Industry Code</b> - Establishment of Australian Association of Pet Dog Breeders	All members of Australian Association of Pet Dog Breeders are required to comply with the organisation's code of ethics and rehoming policy.
2007	Vic	<a href="#">Code of Practice</a>	<b>State Based Code</b> - <i>Code of Practice for the Private Keeping of Dogs</i>	<ul style="list-style-type: none"> <li>- Contains minimum standards of food, water, shelter, transport, training/socialisation/exercise, veterinary treatment and humane treatment</li> <li>- Breeding dogs must be fit, healthy, free of physical or genetic defects, and females are not to be bred before 12 months of age. Puppies are not to be separated from their mother before 7 weeks, and not to be sold before 8 weeks of age (cl 10)</li> <li>- Breeders subject to the provisions regarding 'domestic animal businesses'</li> </ul>
2007	Vic	Legislation	<i>Animal Legislation Amendment (Animal Care) Act 2007</i> (Vic)	
2008	Cth	Code of Practice	Australian Animal Welfare Strategy: Revised Edition	s 89 inserts new 'Breeding of animals with heritable defect' offence
2008	NSW	<a href="#">Code of Practice</a>	<b>State Based Code</b> - <i>Animal Welfare Code of Practice - Animals in Pet Shops</i>	

2008	Qld	<a href="#">Code of Practice</a>	<b>State Based Code</b> - <i>Code of Practice for Pet Shops</i>	- Guidelines for humane and healthy treatment of dogs and puppies sold in pet stores, including regarding training/competencies of staff, animal housing, hygiene, animal management, record keeping, health care, nutrition, sale, transport.
2008	Qld	Legislation	<i>Animal Management (Cats and Dogs) Act 2008 (QLD)</i>	
2008	NSW	Regulations	<i>Companion Animals Regulation 2008 (NSW)</i>	
2008	Vic	Regulations	<i>Prevention of Cruelty to Animals Regulations 2008 (Vic)</i>	
2009	NSW	<a href="#">Code of Practice</a>	<b>State Based Code</b> - <i>Animal Welfare Code of Practice - Breeding Dogs and Cats</i>	<ol style="list-style-type: none"> <li>1. Staff must be 'competent' and 'aware of their responsibilities' under the Code</li> <li>2. Quality Management Systems must be implemented regarding records and procedure</li> <li>3. Animals must be housed in secure, hospitable and humane conditions, of prescribed minimum sizes</li> <li>4. Animals must be kept, treated and transported in conditions which protect them from disease or ill-health</li> <li>5. Health of animals should be continuously monitored, and veterinary access should be maintained, alongside minimum vaccination requirements</li> <li>6. Transfer of ownership of animals should be socially responsible. Animals must not be rehomed before 8 weeks of age, to persons under the age of 18, without vaccination and micro-chipping, and subject to a point-of-sale guarantee (3 day cooling off period and 50% refund)</li> <li>7. Breeding and rearing must be conducted humanely, cleanly, and with respect for animal welfare.</li> </ol>
2009	NT	<a href="#">Code of Practice</a>	<b>Industry Code</b> - Dogs NT - Code of Ethics and Practices	All NT Breeders must be registered financial members of Dogs NT, which requires agreeing to abide by this Code of Ethics (adopted 1 Feb 2009)

2009	Vic	<a href="#">Code of Practice</a>	<i>State Based Code - Code of Practice for the Responsible Breeding of Animals with Heritable Defects that Cause Disease</i>	Requires provisioning of advice of the heritable defect status of dogs Provides standards for permissible breeding and testing for defects
2009	Cth	<a href="#">Consultation</a>	RSPCA Australia - Responsible Companion Animal Breeding	Position paper adopted 28 September 2009, supported by Policy A06 'Breeding of Companion Animals' - Advocates for the compulsory registration and licensing of all breeders (cl 1.2) - Requires breeders to follow 'ten principles' including matching of demand and supply, high standards of care and living conditions, knowledge and concern for the animal and breed, transparent and supportive in providing information about themselves and the animal to new owners, a dedication to compatibility between owner and animal.
2009	Cth	<a href="#">Consultation</a>	Gemmell Review of Australian Animal Welfare Strategy	20 recommendations including funding, review of national implementation plan, development and formalisation of working groups, etc.
2009	Tas	<a href="#">Hansard</a>	Parliamentary Debates, 14 October 2009, Legislative Council (pages 59-64, 72-3)	- Discussion of effect of restrictive breeding rules as possibly positioning Tasmania as a 'breeding haven'
2009	NSW	Legislation	<i>Greyhound Racing Act 2009 (NSW)</i>	Contains specific breeder licensing requirements for racing greyhounds
2009	Tas	Legislation	<i>Dog Control Amendment Act 2009 (Tas)</i>	
2009	Qld	Regulations	<i>Animal Management (Cats and Dogs) Regulation 2009 (QLD)</i>	
2009	Tas	Regulations	<i>Animal Welfare Regulations 2008 (Tas)</i>	
2010	ACT	<a href="#">Code of Practice</a>	<b>Industry Regulations and Code - Dogs ACT - Rules of Practice including Code of Ethics (Part 16) for Responsible Dog Ownership and Breeding Responsibilities</b>	- All registered 'responsible breeders' are required to comply with code of ethics (Part 16) and regulations

2010	ACT	<a href="#">Code of Practice</a>	<b><i>Territory Based Code - Animal Welfare (Welfare of Dogs in the ACT) Code of Practice 2010</i></b>	<ul style="list-style-type: none"> <li>- All dogs older than six months of age must be de-sexed unless the owner holds a permit (issued by the Registrar of Domestic Animal Services) to keep a dog that is not de-sexed (r 10)</li> <li>- At first mating, a dog should be at least 12 months (preferably 18 months of age) and continuous whelping throughout the life of a dog is unacceptable.</li> <li>- Animals selected for breeding should have a balanced temperament, be physically healthy and genetically sound. The deliberate breeding of malformed or aggressive dogs is not acceptable.</li> <li>- Where dogs are allowed to breed, puppies should be health checked by a veterinarian prior to going to their new homes.</li> </ul>
2010	Cth	<a href="#">Consultation</a>	Australian Animal Welfare Strategy + National Implementation Plan 2010-14	Released in November 2010, following a year of consultation, and a stakeholder meeting in August 2010
2010	Cth	<a href="#">Consultation</a>	RSPCA Australia - End Puppy Farming: The Way Forward	
2010	Cth	<a href="#">Legislation</a>	<i>Competition and Consumer Act</i> (Cth) (including Australian Consumer Law)	
2010	SA	<a href="#">Code of Practice</a>	<b><i>Industry Rules and Codes - Dogs SA (South Australian Canine Association Inc) Rule Book including Code of Ethics for Members (Part XV Codes)</i></b>	<ul style="list-style-type: none"> <li>- Code of Ethics for members of the South Australian Canine Association (updated in 2012 and 2015)</li> <li>- Members are to breed only for the purposes of improving the quality of the breed and removing hereditary diseases (r 3)</li> <li>- Members are not to permit the mating of females under 12 months of age, to mate the same female in multiple seasons if possible (and not at all in three consecutive seasons), and are not to permit close-relative breeding (r 5)</li> <li>- Members are to maintain the purity of their breeding stock (r 6)</li> <li>- Members are not to sell or transfer from their care puppies under eight weeks of age (r 7)</li> </ul>
2010	SA	Regulations	<i>Dog and Cat Management (Regulation) 2010</i>	

2010	Tas	Regulations	<i>Dog Control Regulations 2010</i> (Tas)	
2011	Qld	Legislation	<i>Animal Care and Protection Act 2011</i> (QLD)	
2011	Vic	Legislation	<i>Domestic Animals Amendment (Puppy Farm Enforcement and Other Matters) Act 2011</i> (Vic)	Removed requirement to prove animals were being sold for profit, enabled seizure of animals from non-complying operators, increased penalties, and required microchip details to be included in advertisement
2011	NSW	Parliamentary Inquiry	Establishment of Companion Animals Taskforce by NSW Government	<ul style="list-style-type: none"> <li>- Taskforce established to provide advice on breeding practices and 'puppy factories', considered euthanasia rates, rehoming options, micro-chipping and de-sexing, education programs, dangerous and restricted dog breeding</li> <li>- Provided 'Companion Animals Taskforce Report' and 'Management of Dangerous Dogs Report' to Minister for Local Government and Minister for Primary Industries</li> <li>- Work underpinned the requirement to display microchip details, encouraged the purchase of animals from shelters, and a \$90,000 council grant program to provide targeted micro-chipping, registration and de-sexing rates - through the Companion Animals Amendment Act 2013</li> </ul>
2011	Tas	Regulations	<i>Dog Control Amendment Regulations 2011</i> (Tas)	
2011	Tas	Regulations	<i>Dog Control Order 2010</i> (Tas)	
2012	Cth	Consultation	2012 Progress Report on Australian Animal Welfare Strategy: Australian Animal Welfare Advisory Committee	
2012	Qld	Consultation	Queensland Standards and Guidelines for the Welfare of Animals: Breeding Dogs	Developed by Biosecurity Queensland for promulgation under the <i>Animal Care and Protection Act 2001</i> (Cth), but cancelled following the 2012 State Election.



2012	Qld	<a href="#">Consultation</a>	Regulation of Dog Breeders - Draft Regulatory Assessment Statement	Draft Regulatory Assessment Statement for proposed adoption under the Animal Care and Protection Act 2001, following 23 December 2010 Announcement by Ministers for Local Government and Agriculture, and public consultation in October 2011 (receiving over 60 responses), and Jan-March 2012, but cancelled following the 2012 State Election.
2012	Tas	<a href="#">Hansard</a>	Notice of Motion, No 1311, 13 December 2012, The Hon Cassy O'Connor MP (page 723).	- Motion regarding the role E134 the puppy farming industry in the financial E114 experienced by the Dogs' Home of Tasmania
2012	Tas	<a href="#">Hansard</a>	Parliamentary Debates, 21 August 2012, House of Assembly, The Hon Graeme Sturges MP (page 72)	- Discussion of prevalence of dog breeding conditions in context of Whales Protection Amendment Bill 2012
2012	NSW	Regulations	<i>Prevention of Cruelty to Animals Regulations 2012 (NSW)</i>	- Gives statutory effect to the Animal Welfare Code of Practice - Breeding Dogs and Cats (sch 1)
2012	SA	Regulations	<i>Animal Welfare Regulations 2012 (SA)</i>	- Commenced 16 August 2012
2013	ACT	<a href="#">Code of Practice</a>	<b><i>Territory Based Code</i></b> - <i>Code of Practice for the Sale of Animals in the ACT</i>	<ul style="list-style-type: none"> <li>- Enforceable from 21 October 2013</li> <li>- Contains minimum standards for care and management of animals for sale in ACT, including secure, protected, stress-free, hygienic and appropriately sized accommodation</li> <li>- Animals are to be given 'appropriate' food sufficient to maintain nutrition requirements throughout the day</li> <li>- Animals must be protected from disease, distress, pain and injury, and must be monitored on a daily basis,</li> <li>- Animals are not to be sold if diseased or injured</li> <li>- Sellers are responsible for the taking of reasonable steps to protect the welfare of animals that they have for sale, before/during/after the sale.</li> </ul>

2013	Tas	Consultation	Proposed Animal Welfare Standards for Dogs - Submission Period	<ul style="list-style-type: none"> <li>- Proposed minimum standards to be passed under the Animal Welfare Act to be made legally enforceable, both for businesses and for private owners.</li> <li>- A quality management system recording various characteristics of each dog, its registration details, vaccination status et cetera must be implemented (standard 2)</li> <li>- Dogs must not be mated in their first oestrous cycle, more than twice in an 18-month period (standards 11.1-11.2)</li> <li>- Breeding pairs must be isolated and supervised, and whelping females must be given sufficiently clean and spacious areas to whelp and to raise their puppies (standards 11.4-11.8).</li> <li>- Puppies are not to be rehomed before spontaneous weaning or 6 weeks of age, and must be fully vaccinated and any recognised illnesses/vices are fully disclosed (standard 12)</li> </ul>
2013	Tas	<a href="#">Hansard</a>	Notice of Motion, No 1882, 14 November 2013, The Hon Cassy O'Connor MP (page 3467)	<ul style="list-style-type: none"> <li>- Motion regarding puppy farming and release of Dog Standards Discussion Paper</li> </ul>
2013	Cth	Legislation	<i>Voice for Animals (Independent Office of Animal Welfare) Bill 2013 (Cth)</i>	Introduced by Adam Bandt MP (House of Representatives), to establish an independent statutory authority to advise on Animal Welfare in Commonwealth Regulated Activities - lapsed at dissolution of Parliament on 5 August 2013
2013	Cth	Legislation	<i>Voice for Animals (Independent Office of Animal Welfare) Bill 2013 [No. 2] (Cth)</i>	Introduced by Senator Lee Rhiannon, to establish an independent statutory authority to advise on Animal Welfare in Commonwealth Regulated Activities - lapsed at end of Parliament on 12 November 2013
2013	WA	<a href="#">Legislation</a>	<i>Dog Amendment Act 2013 (WA)</i>	<p>Commenced 29 October 2013</p> <ul style="list-style-type: none"> <li>- Dangerous dog breeds/declared dangerous dogs are not to be bred</li> <li>- Dogs are to be micro-chipped before three months in age, and/or before sale.</li> </ul>

2013	Qld	<a href="#">Parliamentary Inquiry</a>	Parliamentary Petition: Compulsory De-sexing of all Cats and Dogs 6mths+	1535 signatures in Parliamentary e-petition tabled 10 September 2013 supporting compulsory de-sexing for all cats and dogs aged above 6 months unless a registered breeder or rescue group. Response confirms that state-wide breeder registration is unlikely to be introduced in light of Council leadership: <a href="https://www.parliament.qld.gov.au/apps/Epetitions/responses/2122-13.pdf">https://www.parliament.qld.gov.au/apps/Epetitions/responses/2122-13.pdf</a>
2013	SA	<a href="#">Parliamentary Inquiry</a>	Select Committee on Dogs and Cats as Companion Animals	<ul style="list-style-type: none"> <li>- Final report tabled 3 July 2013, following 168 submissions, 8 witnesses and eleven meetings.</li> <li>- Recommended, inter alia, the enforcement of a standard for breeding of companion animals, a licensing scheme for breeders (recommendations A1-A2), require publication of breeder identification information (recommendation B1), require minimum qualification for breeding establishment staff (recommendation B2),</li> </ul>
2013	NT	Regulations	<i>Animal Welfare Regulations 2013 (NT)</i>	
2013	WA	Regulations	<i>Dog Regulations 2013 (WA)</i>	
2014	Cth	<a href="#">Code of Practice</a>	<i>Australian Animal Welfare Strategy - Guidelines for Companion Animals</i>	<ul style="list-style-type: none"> <li>- Identification of 'nationally consistent' regulations, modelled on the Victorian Code of Practice, as core to the operation of the Australian Animal Welfare Strategy.</li> <li>- Project identified by the Companion Animals Working Group, and are currently being considered by the Working Group and the Sub-Committee on Animal Welfare prior to further consultation</li> </ul>
2014	Vic	Legislation	<i>Domestic Animals Amendment Act 2014 (Vic)</i>	<ul style="list-style-type: none"> <li>- Commenced 1 July 2014</li> <li>- Established offence of permitting the breeding of a dog that is a restricted breed dog (with an extended limitations period of 3 years)</li> </ul>
2014	NSW	Parliamentary Inquiry	Establishment of Responsible Pet Ownership Reference Group	<ul style="list-style-type: none"> <li>- Designed to advise government regarding 'responsible pet ownership policy, legislative development and best practice for managing cats and dogs in NSW'.</li> </ul>

2014	Tas	<a href="#">Code of Practice</a>	<b>State Based Code</b> - Animal Welfare Guidelines - Breeding Dogs	<ul style="list-style-type: none"> <li>- Dogs must be housed in conditions which are safe, free from hazards (e.g. tethering), adequately ventilated, protected from the elements, secure, and adequately lighted (guideline 3)</li> <li>- Pups must be individually identified, afforded no less than 60 minutes of exercise per day (guideline 4)</li> <li>- Dogs must be provided with adequate food and water, at least once daily, meeting the minimum requirements of the dog, and puppies must be fed three times daily such that they are not without food for more than 12 hours (guideline 5)</li> <li>- Pregnant dogs or other dogs requiring special care must be supervised as much as is necessary, and no less than twice daily (guideline 8.4)</li> <li>- Otherwise, substantially similar in context to the above. E132</li> </ul>
2015	Qld	<a href="#">Code of Practice</a>	<b>Industry Code</b> - Dogs Queensland - Draft Code of Practice for Member Breeders	<p>Draft Code of Practice for Member Breeders released 14 September 2015. Matters included</p> <ul style="list-style-type: none"> <li>- Requirement to establish and maintain breeding establishment records (standard 5), ensure minimum standards of safety, wellbeing and socialisation in treatment and conditions (st 6, 8, 10, 11, 12).</li> <li>- Bitches are not to be whelped before 1 year of age, unless fit and healthy, and after a caesarean section unless under veterinary advice. Puppies under six weeks of age are to remain with their mothers and must be weaned before rehoming (standard 7)</li> <li>- Dogs must receive annual health checks from veterinarians, and must be inspected daily to monitor health (standard 9)</li> </ul>

2015	Vic	<a href="#">Code of Practice</a>	<b>State Based Code</b> - <i>Code of Practice for the Operation of Breeding and Rearing Businesses</i>	<ul style="list-style-type: none"> <li>- Amendments to the 2014 Code commenced on 1 July 2015 following 23,350 submissions</li> <li>- Specifically designed to inhibit the development of 'puppy and kitten farms'.</li> <li>- Health Management Plans must be prepared and reviewed annually by veterinarians, comprising a description of all aspects of the operation of the business</li> <li>- All animals in breeding and rearing businesses must receive an annual general health check, and mating females are required to be certified (through an additional check prior to first mating, and prior to each breeding season) as sufficiently mature to mate with.</li> <li>- The plan includes limits for minimum and maximum age/breeding cycles for both dogs and cats</li> <li>- Sale guarantee is a three-day cooling off period with a 75% refund, with extended 21-day health certifications, and a 3 year guarantee</li> <li>- Enforcement through the RSPCA</li> </ul>
2015	Qld	<a href="#">Consultation</a>	Consultation on Puppy Farming in Queensland (August-September)	<ul style="list-style-type: none"> <li>- Over 8,300 survey responses received in public consultation regarding strategies to protect puppies and safeguard welfare of dogs kept for breeding</li> <li>- Survey responses are to be reviewed with a view to preparing paper for amendments to legislation</li> </ul>
2015	Qld	<a href="#">Consultation</a>	Consultation - Protecting Puppies: Safeguarding the Welfare of Breeding Dogs in Queensland	Queensland Government - Consultation period 9 August - 6 September 2015. Consult focused on 'puppy farms and the future regulation of dog breeding in Queensland'.

2015	SA	<a href="#">Consultation</a>	<a href="#">Public Consultation - Dog and Cat Management (Miscellaneous) Amendment Bill 2015, Code of Practice for the Welfare of Dogs and Cats in Breeding Facilities (April-June 2015)</a>	<ul style="list-style-type: none"> <li>- Community Consultation through 'YourSay' platform for draft Breeding Code released in full, received more than 2300 submissions.</li> <li>- Consultation undertaken by a South Australian 'Citizens' Jury' of 35 members, 52 submissions, final report available at <a href="http://yoursay.sa.gov.au/decisions/citizens-jury-dog-and-cat-management/outcome">http://yoursay.sa.gov.au/decisions/citizens-jury-dog-and-cat-management/outcome</a></li> <li>- Departmental response available at <a href="http://ysa-v2-katalyst-com-au.s3.amazonaws.com/production/2015/10/13/23/30/59/b6454b02-93a4-4a5c-b054-8a3ca6ea812c/93667%20Govt%20Response%20Citizens%20Jury%20Dog%20Cat%20FIN%20WEBv4.pdf">http://ysa-v2-katalyst-com-au.s3.amazonaws.com/production/2015/10/13/23/30/59/b6454b02-93a4-4a5c-b054-8a3ca6ea812c/93667%20Govt%20Response%20Citizens%20Jury%20Dog%20Cat%20FIN%20WEBv4.pdf</a></li> </ul>
2015	ACT	<a href="#">Legislation (repealed)</a>	<i>Domestic Animals (Breeding) Legislation Amendment Act 2015 (ACT)</i>	<p>Introduced to amend the Animal Welfare Act 1992, the Domestic Animals Act 2000 and the Domestic Animals Regulations 2001.</p> <ul style="list-style-type: none"> <li>- Permits the creation of 'Breeding Standards' to prohibit the 'intensive breeding' of cats and dogs and creates a range of offences for violation of that breeding standard.</li> <li>- Renders it an offence to breed from a cat/dog without a breeding license, the process for which is established by the regulation</li> </ul>
2015	Cth	Legislation (pending)	Voice for Animals (Independent Office of Animal Welfare) Bill 2015	<p>Introduced by Senator Lee Rhiannon, to establish an independent statutory authority to advise on Animal Welfare in Commonwealth Regulated Activities - second reading speech 23 Jun 2015, referred to Senate Rural and Regional Affairs and Transport Legislation Committee (reported 15/10/2015)</p>
2015	SA	Legislation (pending)	Animal Welfare (Companion Animals) Amendment Bill	<ul style="list-style-type: none"> <li>- Seeks to control and regulate licensing of companion animals in South Australia, including mandatory de-sexing, creation of breeders' licences, require disclosure of information on sale of animals, and enforce a cooling off period of 10 days, subject to a general defence of permitting unintentional and non-negligent breaches</li> <li>- Introduced as a Private Members' Bill by The Hon J M Lensink MLC, restored on 11/02/2015</li> </ul>

2015	NSW	<a href="#">Parliamentary Inquiry</a>	Joint Select Committee on Companion Animal Breeding Practices in New South Wales	<ul style="list-style-type: none"> <li>- Established 13 May 2015 to inquire into and report on companion animal breeding practices in NSW, Government response due 27 Feb 2016</li> <li>- Tabled report on 27 August 2015, following 344 submissions, a petition containing 3000+ signatures, 2,200+ emails/correspondence, and 42 witnesses across three public hearings.</li> <li>- Recommended introduction of breeders' licensing scheme for commercial dog breeding in NSW, and that licensing information be displayed alongside microchip details in any advertisement</li> </ul>
2015	Qld	<a href="#">Parliamentary Inquiry</a>	Queensland Greyhound Racing Industry - Commission of Inquiry (Final Report)	<p>Tabled 1 June 2015.</p> <ul style="list-style-type: none"> <li>- Recommends the cessation of Greys breeding incentive program ([57]), the insertion of welfare provisions in the Racing Act and establishment of an industry racing fund (recommendation 9), and a 'welfare fee' as part of propounded registration (Recommendation 10), the increased dissemination of socialisation information (Recommendation 11) and the establishment of a 'lower class' of racing for animals otherwise requiring rehoming (Recommendation 12).</li> </ul>
2015	Tas	<a href="#">Parliamentary Inquiry</a>	Joint Select Committee on Greyhound Racing in Tasmania	<ul style="list-style-type: none"> <li>- Terms of reference E151 include reference to 'overbreeding'.</li> <li>- 86 submissions received D145</li> </ul>
2015	Vic	<a href="#">Parliamentary Inquiry</a>	Inquiry into the Legislative and Regulatory Framework Relating to Restricted Breed Dogs	<ul style="list-style-type: none"> <li>- Created 26 May 2015, reporting deadline 31 March 2016</li> <li>- Received 500 submissions, with 5 days of public hearings</li> </ul>
2015	ACT	<a href="#">Regulations</a>	<i>Animal Welfare (Breeding Standard) Determination 2015 [No. 1]</i>	<ul style="list-style-type: none"> <li>- Animals may not be bred if unhealthy, ill, carry a genetic fault, or a transmissible disease (cl 1)</li> <li>- Dogs may be bred only between the ages of 18 months and 6 years (cl 2)</li> <li>- Dogs may only be bred a maximum of 4 times (cl 3); litters must be spaced at least 18 months (cl 4)</li> <li>- Dogs may not be re-bred following a caesarean section or failure to carry a litter to a term of 42 days (cl 9)</li> </ul>

2016 Qld

[Legislation](#)

Animal Management (Protecting Puppies) and Other Legislation Amendment Act (2016)

On 16 February 2016 the Animal Management (Protecting Puppies) and Other Legislation Amendment Bill 2016 (Bill) was introduced to Parliament. This Bill will put in place measures so that cruel puppy farms will no longer go undetected in Queensland.

For the first time, a new dog breeder registration scheme will allow authorities to locate and close down dog breeders who put profit before the welfare of dogs. Dog breeders in Queensland will be required to register for a dog breeder identification number and then display their breeder ID when advertising dogs for sale, exchange or give away.

Breeders will also need to record their breeder ID against the microchip details of dogs they breed allowing a dog to be traced back to their breeder.

This will be backed up with compulsory standards and guidelines for breeding dogs which are being developed in consultation with the RSPCA and Dogs Queensland. The breeder registration scheme will allow people to check that the breeder is registered and confidently buy a dog knowing that the breeder is accountable for the welfare of their dogs and they can be found if they are not doing the right thing.

Exemptions

Primary producers who breed working dogs and accredited breeders of approved entities will be exempt from the registration scheme. Organisations that already register their members, will be able to apply to become an approved entity.

Members of approved entities will still need to display their accredited breeder number when supplying dogs and have their number recorded against the dog's microchip information.

The vast majority of Queenslanders support compulsory registration for dog breeders to ensure breeders are able to be tracked.

<https://www.daf.qld.gov.au/animal-industries/welfare-and-ethics/animal-welfare/Dog-breeder-regulations>

<https://www.daf.qld.gov.au/animal-industries/welfare-and-ethics/animal-welfare/Dog-breeder-regulations>

This came into effect 26 May 2017



2016 Vic

[Legislation  
Pending](#)

Domestic Animals  
Amendment (Puppy Farms  
and Pet Shops) Bill 2016,

This bill aimed at eliminating bad breeding practices and puppy farms was introduced by Hon J Allan on the 11 October 2016.

The purpose of this Act is to amend the Domestic Animals Act 1994— 5 (a) to regulate the number of fertile female dogs kept by breeding domestic animal businesses; and Introduced in the Assembly Domestic Animals Amendment (Puppy Farms and Pet Shops) Bill 2016 Part 1—Preliminary Domestic Animals Amendment (Puppy Farms and Pet Shops) Bill 2016 581140B.I-11/10/2016 2 BILL LA INTRODUCTION 11/10/2016 (b) to further regulate the breeding of dogs and cats and the sale of dogs and cats in pet shops; and (c) to provide for the registration of foster carers 5 and single use permits to sell certain animals; and (d) to further provide for the administration and enforcement of that Act and legal proceedings; and 10 (e) to provide for other minor and related matters.

It met with much opposition by dog breeders and its second reading speech has been delayed.

### Appendix 3 - Table of State & Territory Canine Associations Codes of Ethics / Breeding Practices

Details of Codes of Conduct in Relation to Breeding		Clause in relation to Breeding Purpose
<b>Dogs ACT</b>  ACT Canine Association Inc.	Rules and Regulations Part 16 - Code of Ethics Clause 16.1 (includes 12 clauses) & Clause 16.2 (includes 6 clauses) <a href="http://dogsact.org.au/wp-content/uploads/2015/11/Part_16_CodeOfEthics.pdf">http://dogsact.org.au/wp-content/uploads/2015/11/Part_16_CodeOfEthics.pdf</a> Last update 18 October 2014	16.1.3  I shall breed only for improving the standard of the breed and not for the pet market or any other commercial purpose.
<b>Dogs NSW</b>  Royal NSW Canine Council Ltd	Regulations - Part XIII Code of Ethics Clauses 1 to 27  <a href="http://www.dogsnt.com.au/images/Part_13_Code_of_Ethics-April_2017.pdf">http://www.dogsnt.com.au/images/Part_13_Code_of_Ethics-April_2017.pdf</a>  Last update April 2017	6. A Member shall breed only with the intent of maintaining and/or improving the standard of the Breed and the health, welfare and soundness of their dogs having regard to the following: - (i) by striving to eliminate hereditary diseases within their dogs and their breed. (ii) that the health, physical welfare and fitness for function of dogs is of prime importance, and (iii) that a Member shall make every reasonable effort to ensure that dogs bred by them do not suffer from any disorder that impedes their sight, breathing or ability to move freely or which is otherwise detrimental to their comfort and wellbeing.
<b>Dogs NT</b> North Australian Canine Association Inc.	NACA Rules and Codes of Conduct - Section 10 Codes of Ethics and Practice Clauses 10.3 (a) to (l) <a href="http://www.dogsnt.com.au/naca_rules_section10_codeofethics_1feb09.pdf">http://www.dogsnt.com.au/naca_rules_section10_codeofethics_1feb09.pdf</a>  Last update 1 February 2009	Clause 10.3 (c)  I shall breed only for the purpose of improving the standard of the breed, and not for the pet market or any other commercial purpose.
<b>Dogs Queensland</b>	Dogs Queensland Rules 2017 Code of Ethics of Responsible Dog Ownership, Including Keeping, Welfare, Breeding, Selling and Disposing of Dogs by Members of the Canine Control Council (Queensland) Ltd Clauses 2.1 to 2.22 <a href="https://www.dogsqueensland.org.au/media/49633/rules-2017-v11.pdf">https://www.dogsqueensland.org.au/media/49633/rules-2017-v11.pdf</a>	2.1 (10)  I shall breed only for the purpose of improving the standard of the breed;

	Last update 2017	
<b>Dogs SA</b>  The SA Canine Association Inc.	SACA Rule Book - Part XV Codes A Code of Ethics for Members Clauses 1 to 11 <a href="http://www.dogssa.com.au/?page_id=840">http://www.dogssa.com.au/?page_id=840</a>  Last update 1 July 2016	A 3  I shall breed only for the purpose of improving the quality of the breed in line with the breed standard and strive to eliminate hereditary diseases in the breed/s that I produce.
<b>Dogs Tasmania</b>  Tasmanian Canine Association Inc.	Regulations - Code of Ethics and Behaviour Clauses 1 – 30 <a href="http://www.tasdogs.com/Documents/Code%20of%20Ethics%20&amp;%20Behaviour%20July%202015.pdf">http://www.tasdogs.com/Documents/Code%20of%20Ethics%20&amp;%20Behaviour%20July%202015.pdf</a>  Last update 1 January 2017	11  A member shall breed primarily for the purpose of improving the quality, health, welfare, soundness or working ability of the breed in accordance with the breed standard, and not specifically for the pet or commercial market.
<b>Dogs Victoria</b>  The Victorian Canine Association Inc.	Regulations, Codes, Policies & Procedures 20.1 Code of Practice Clauses 20.1.1 to 20.1.30 Last update 15 June 2017 <a href="http://www.dogsvictoria.org.au/uploads/Regulations%2015%20September%202017.pdf">http://www.dogsvictoria.org.au/uploads/Regulations%2015%20September%202017.pdf</a>	20.1. 11  A member shall breed primarily for the purpose of improving the quality and / or working ability of the breed in accordance with the breed standard, and not specifically for the pet or commercial market.
<b>Dogs West</b> Canine Association of Western Australia	Regulations – Section H Code of Ethics Clauses 2.15 - 2.33 <a href="http://www.dogswest.com/dogswest/d/Members/Rules_Regulations/SMBWF51TWQ9TEEGWRVQTT9BX0EF01E/DAWKLPDSNH4T6YB.pdf/SECTION+H.pdf?">http://www.dogswest.com/dogswest/d/Members/Rules_Regulations/SMBWF51TWQ9TEEGWRVQTT9BX0EF01E/DAWKLPDSNH4T6YB.pdf/SECTION+H.pdf?</a>  Last updated 1 July 2017	2.16 A member shall breed primarily for the purpose of improving the quality and / or working ability of the breed in accordance with the breed standard, and not specifically for the pet or commercial market. A member retains the right of free trade, to advertise directly and sell dogs not kept for line maintenance purposes by that member.

## Appendix 4 – Survey Instruments

*Table 46 - Details of Survey Instruments*

Data Set No.	Data Set Name	Number of Questions	Questions used in this research	Number of responses
1	Interviews with Stakeholders		30 – 45	11
2	Library and Archival Industry Data Set	Not Applicable		-
3	State and Territory Canine Association Survey	21		1
4	Dog Owner Survey	31	1 2 3 4 5 6 7 8 9 10 13 14 15 16 18 19 20 21 22 24 25 26	2841
5	Dog Breeder Survey	42	1 2 16 17 18 22 24 25 34 36 37 38	275

## **Sample of Interview Questions – Data Set 1**

### **Interview Questions for Welfare Organisations**

#### **Introductory Questions**

1. What is your current role within the organisation?
2. How long have you been involved with the organisation?
3. What is your personal involvement with dogs?
4. How much of your current time do you spend doing dog related activities? (Say on a weekly basis?)
5. Which other groups/ organisations do you believe are the key stakeholders in relation to dog breeding in Australia?

#### **Thoughts on the Current Regulatory Framework**

6. How familiar are you with the current regulatory framework that regulates dog ownership, dog breeding and the rights of dog owners?
7. Before I get into more specific questions what are your thoughts on the current regulatory framework?
8. What do you think is the role of regulation in relation to dog ownership and breeding?
9. What about enforcement:
  - a. Who should be enforcing regulations around dog cruelty, dog welfare and dog breeding?
  - b. What are your thoughts on the effectiveness of current enforcement mechanisms? Are they too lenient/too harsh?
  - c. How could enforcement be improved?
10. Do you believe that the current regulatory framework could be improved?

#### **Issues Facing Dog Breeding in Australia**

11. What do you believe, either in your role within XX, or in any other capacity are the major issues facing dog breeding in Australia?
12. Do you have any opinions on how these issues might be best addressed?

#### **Major Role and Effectiveness of XX**

13. What are the major roles of the XX and the State Bodies it represents?

14. Who does the XX represent? How are decisions made, what are the processes that ensure effective decision making?
15. How could the XX be made more effective?
16. How is XX funded?

#### **The Future of Dog Breeding and Pure Breed Dog Breeding in Australia - Breed Sustainability and Breeding Healthy Happy Long-Lived Dogs**

17. What is your organisation's role in dog breeding in Australia?
18. What is your organisation's role in the welfare of dogs in dog breeding in Australia?
19. What is the role of the other stakeholder groups that you identified in response to question 5 in dog breeding and in ensuring good levels of welfare of dogs in dog breeding in Australia?
20. What is the role that registered pure bred dog breeder's play in Australia?
21. What is your organisation's role in pure breed dog breeding and dog showing in Australia?
22. What regulation does XX rely upon to assist it to carry out its role and to protect dogs?
23. How does XX enforce this regulation?
24. Does XX rely on self-regulation and is this effective?
25. Does the XX believe in the compulsory licensing of all dog breeders?
26. What do you believe drives/motivates people to breed and show dogs?
27. Do you believe that there is a role for commercial dog breeding in Australia?
28. What do you believe drives/motivates people to commercially breed dogs; do you believe it is a different motivation from the breeding of pure bred dogs?
29. Does the XX have a role in relation to commercial dog breeding and puppy farming?
30. There is a belief that there is some tension between pure bred dog breeders and those that advocate for dogs that live in shelters, what is your organisations view on the reality that there are many shelter dogs without homes and still many pure breed dog breeders that breed and sell puppies?

#### **Questions Specifically to the Animal Welfare Groups**

31. Do you have knowledge about how many dogs the XX and the pounds and centres that it represents take in in the various States or Territories every year?
32. Why do you think so many dogs are relinquished or abandoned?

33. Why do so many companion dog owners buy or acquire non-purebred or non-registered dogs?
34. Do you support the notion of compulsory de-sexing of dogs – which dogs?
35. Whose role is it to enforce dog welfare and ensure satisfactory dog welfare in dog breeding?
36. What are the most effective ways of ensuring that breeding dogs are properly cared for?
37. What are some of the steps the XX believe will improve animal welfare outcomes in Australia?

#### **The Role of the Media and Public Discourse**

38. What is the role of social media, or regular media in informing you and other key stakeholders about the issues and how does the XX use social media, their webpage etc.
39. Are there other ways that the XX promotes the adoption of shelter dogs?

#### **Puppy Buyers**

40. Where and how should well informed puppy buyers source a puppy?
41. Whose role is it to provide information on the many different ways a puppy buyer can source a puppy?
42. What do you believe are the benefits of buying a pedigreed and registered dog or puppy?
43. What do you believe are the benefits of acquiring a dog from a shelter?
44. What can puppy buyers do and what should they do if they discover that the puppy that they purchased has a genetic, physical or temperament issue that they were not aware of when they purchased/acquire the puppy?

#### **Concluding**

45. Is there anything else you would like to add? Do you have any questions for me?

## Survey Sent to State and Territory Canine Associations – Data Set 3

Executive Officer

Dogs NSW

PO Box 632 St Marys NSW 1790

info@dogsnsw.org.au

### The Role of Regulation in Dog Breeding in Australia

#### Survey Questions:

The answers to these questions will inform the researcher's study in relation to the effectiveness of the canine industry bodies in regulating their members and the role that codes of ethics and breeding codes play in ensuring good outcomes for members, dogs and dog owners.

#### Complaints/Enforcement and Inspections

1. Does the RNSWCC have a written procedure that is followed when a complaint is received against a member in relation to breaching Dogs NSW regulations and/or code of ethics? [ It is noted that you have a one page document that sets out the procedure for making a complaint, it is the steps that the RNSWCC take following receipt of a complaint that is of interest]  
Yes / No (Please circle one)
2. Does the RNSWCC keep statistics on the number of members reported/complaints made against members for breaching both Dogs NSW regulations and codes of ethics each year?  
Yes / No (Please circle one)
3. Does the RNSWCC keep any types of records around the outcomes of investigations made by the Investigative Panel or the Committee that considers these complaints?  
Yes / No (Please circle one)
4. Does the RNSWCC keep records that would enable the types of complaints being made to be identified?  
Yes / No (Please circle one)
5. Could the RNSWCC identify how many complaints have been made each year by a member of the public alleging a breach of the regulations or code of ethics in relation to the breeding practices of members?  
Yes / No (Please circle one)
6. If you answered yes to any of questions 2 - 5 please provide statistics for:
  - a. the number of complaints received each year against members



- b. the number dealt with by an investigation by Dogs NSW's Investigative Panel
  - c. the number dealt with each year by any Dogs NSW Committee
  - d. the number dealt with by Council
  - e. the number of complaints that concern the breeding practices of members and the outcomes of the investigations around these complaints
7. Does your organisation undertake site inspections of members' premises? If so please provide data on the number of site inspections undertaken in the last three years.

#### **Role of Committees/Panels**

8. What is the role of the Dogs NSW's Investigative Panel?
9. How often does the Dogs NSW's Investigative Panel meet each year?
10. Do you have formal procedures for recruiting members to the Dogs NSW's Investigative Panel?
- Yes / No (Please circle)
11. Do any members of your current Dogs NSW's Investigative Panel have legal training?
- Yes / No (Please circle)
12. What is the role of the Public Relations Committee?
13. How often does the Public Relations Committee meet each year?
14. Do you have formal procedures for recruiting members to the Public Relations Committee?
- Yes / No (Please circle)
15. Do any members of the current Public Relations Committee have legal training?
- Yes / No (Please circle)
16. What is the role of the Media and Legislation Committee?
17. How often does the Media and Legislation Committee meet each year?
18. Do you have formal procedures for recruiting members to the Discipline and Disputes Committee?
- Yes / No (Please circle)
19. Do any members of your current Discipline and Disputes Committee have legal training?
- Yes / No (Please circle)
20. What is the process the RNSWCC goes through to change the Regulations and Codes of Ethics?
21. How often have you changed your Regulations and your Code of Ethics over the last 3 years?

## Principal Objects

22. RNSWCC's principal objects are:

- 3.1 To promote and raise the standards of breeding of pure breed dogs,
- 3.2 To promote and encourage the breeding of purebred dogs,
- 3.3 To promote and encourage the holding and conduct of canine exhibitions, shows, competitive trials and dog sports
- 3.4 To educate the members of RNSWCC and the general public in relation to all aspects of pure breed dogs
- 3.5 To promote and assist and to make contributions to canine veterinary research and to create and endow scholarships and fellowships.

What steps do you have in place to monitor meeting the statements contained therein?

What are your indicators for success in meeting these components of your principal objects?

23. You confirm in a recent press release (23 March 2015) that 'Dogs NSW members abide by a strict code of ethics in the breeding of pure breed pedigreed dogs.' What measures do you have to ensure this and or to measure compliance with this?

Thank you very much for taking the time to answer these questions

Simone Bingham

30 April 2015

## Dog Owner Survey – Data Set 4

### General Questions about your most recently acquired dog

1. What is the approximate age of your most recently acquired dog?
  - ☐ Under 6 months of age
  - ☐ Over 6 months but under 2 years of age
  - ☐ Over 2 years but less than 4 years of age
  - ☐ Between 4 years and eight years old
  - ☐ Over eight years of age
2. Approximately how long have you owned your most recently acquired dog?
  - ☐ For less than 6 months
  - ☐ Over 6 months but for less than 2 years
  - ☐ For over 2 years but less than 4 years
  - ☐ For over 4 years but less than 8 years
  - ☐ For over 8 years

If you would like to provide a further explanation, please do so here ...

3. What are the roles this dog plays in your life (please tick as many as apply)
  - ☐ Companion
  - ☐ Show dog
  - ☐ Obedience of agility dog
  - ☐ Watch dog
  - ☐ Family member
  - ☐ Service Dog
4. How much research did you undertake before you acquired this dog?
  - ☐ I undertook extensive research
  - ☐ I undertook no research as I knew the type of dog I wanted
  - ☐ I undertook no research as it was a spur of the moment decision
  - ☐ I undertook no research as the dog was given to me or rescued by me
  - ☐ Other (please specify)
5. Where did you acquire this dog?
  - ☐ From a dog breeder
  - ☐ From a dog's home, dog shelter or rescue organisation
  - ☐ From a pet shop
  - ☐ In response to a newspaper advertisement
  - ☐ I bred him/her
  - ☐ I cannot remember
  - ☐ Other (please specify)
6. How important were the following matters when you decided to acquire this dog?  
Essential / Very important / somewhat important / Not at all important
  - ☐ That the dog be of a specific breed
  - ☐ That the dog have a good temperament when I first met him or her

- That I could meet the breeder and/or view the parents of the dog
  - How the puppy/dog had been raised
  - Predictability about size at maturity
  - Predictability about temperament and future needs
  - That I was able to rescue/house a dog that needed a good home
  - That the dog was bred by a registered member of a Canine Association
  - That the dog would get on with other animals and/or children
  - That the dog would have good conformation/ structure
  - That the dog had been genetically tested by its breeder against potential genetic issues
  - Other please specify
7. What written information did you receive when you acquired/purchased this dog? (Please tick all that are applicable)
- Confirmation of the breeder's name and address
  - Detail regarding the dog's history and/or temperament
  - Details regarding the dog's dietary and/ or health requirements
  - Receipt for purchase funds/ adoption or rescue fee
  - Copy original pedigree documentation
  - Microchip details
  - Purchase contract
  - No written information received
  - Other (please specify)
8. How satisfied are you with your purchasing/acquiring choices when it comes to this dog?
- Completely satisfied
  - Very satisfied
  - Somewhat satisfied
  - Not satisfied
  - For any of the above answers if you would like to give more detail please do so here ....
9. Would you buy the same breed/type of dog again?
- Yes
  - No
- If you would like to expand on this answer, please do so here
10. Do you maintain contact with the breeder/seller?
- Yes
  - No
- If yes please provide details
11. What did you pay (if anything) for this dog?
- Over \$2000
  - Between \$1000 and \$2000
  - Between \$500 and \$999
  - Over \$1 but under \$499

- I did not pay an initial purchase price or adoption fee
- I do not remember

**Question on how many dogs currently reside with you**

12. How many dogs currently live with you (including this dog) central

- 1 dog
- 2 dogs
- 3 dogs
- 4 dogs
- Between 5 and 9 dogs
- Over 10 dogs

If you would like to expand on your answer, please do so here ....

**Questions about Your Dog's Health**

13. Has your dog had any medical or other health or temperament conditions over its time with you other than standard vaccination and check-up visits to your Veterinarian?

- Yes
- No

If you answered yes, can you please provide details ....

14. Are you aware of what caused the latest of the medical issues experienced by your dog?

- Yes
- No

If yes, can you please provide details ....

15. Do you believe that any of the health or medical issues your dog has suffered may be a result of his or her breeding, or be specific to dogs of his or her type?

- Yes
- No

If you answered yes can you provide details of this issue?

**Questions about this dog's breed or type**

16. Is this dog a pure breed dog?

- Yes
- No
- If he or she is a pure breed dog, please indicate what breed here.

If he or she is a pure breed dog, please indicate what breed here

If he or she is not a pure breed dog please indicate the type of dog or cross breed he or she is, e.g. Border Collie cross etc.

### Questions Specifically for Owners if the most recently acquired dog is a Pure Breed Dog

If you answered 'Yes'

17. Do you hold his/ her pedigree/canine association registration papers?

- ☐ Yes
- ☐ No

If you do hold the pedigree/canine association papers for this dog please indicate here if you have registered your ownership with one of the State or Territory Canine Associations.

### Questions about membership of a State or Territory Canine Association

18. Are you a current member of any of the State or Territory Canine Associations?

- ☐ Yes
- ☐ No

19. If you are a member of one of the State or Territory Canine Associations how much involvement do you have with the organisation?

- ☐ I am very involved with the Association and attend dog events such as conformation shows, obedience or agility events
- ☐ I am somewhat involved with the Association
- ☐ I am not actively involved with the Association
- ☐ Other (please specify)

20. Is there anything more that you believe your State or Territory Canine Association should be doing in relation to the breeding of dogs in Australia?

- ☐ Yes
- ☐ No

If you answered yes, please indicate what more you believe they should be doing. ...

### Questions about Dog Breeding in Australia

21. Do you believe there should be commercial dog breeding in Australia?

- ☐ Yes
- ☐ No

Whatever your answer, if you would like to provide your reasoning please do so here

22. Who should be allowed to **breed** dogs in Australia? (Please circle all that apply)

- ☐ Anyone who wants to
- ☐ Anyone provided the local council has given them a license to breed
- ☐ Members of one of the Canine Associations affiliated with the Australian National Kennel Council (ANKC)
- ☐ Member of another breeding association such as the Master Dog Breeders & Associates (MDBA)

- There should be an approved breeders' scheme at either Local Council, State or National level and only members of such a scheme should be able to breed dogs
- No one at all as there are too many dogs in Australia without homes
- I have never turned my mind to this question
- Other – please specify

23. Who should be responsible for ensuring the welfare of all dogs in Australia? (Please click and drag in order of importance.)

- The Federal Government
- The State Government
- Local Councils
- The RSPCA
- Welfare Groups
- The Australian National Kennel Club (ANKC)

### Questions about Dog Ownership in Australia

24. Are you aware of your rights and obligations as a dog owner?

- Fully aware
- Somewhat aware
- Not very aware
- Not at all aware
- Other - please specify ...

25. If you are aware of any rights and obligations that dog owners' have/face in Australia (from canine associations, local councils, state and federal laws), please list them here

26. Have any of the laws around dog ownership and dog management ever been enforced against you or by you? (E.g. has council ever fined you for not having a dog licence or you took legal action over an issue with our dogs?)

- Yes
- No

If you have had any dog ownership or dog management laws enforced against you can you please provide details here .....

### Some general demographic information

We will be able to get a better understanding of the types of dog owners we have surveyed through your responses to the information below.

27. What is your gender?

- Female
- Male

28. What is your age?

- ☐ Under 18
- ☐ 18 to 24
- ☐ 25 to 34
- ☐ 35 to 44
- ☐ 45 to 54
- ☐ 55 to 64
- ☐ 65 to 74
- ☐ 75 or older

29. How long have you lived in Australia?

- ☐ Born here
- ☐ Under 10 years

If not born in Australia please indicate country of birth .....

30. What is the highest level of schooling you have completed or the highest degree you have received?

- ☐ Grade 10
- ☐ College/Senior Secondary School
- ☐ Diploma
- ☐ Bachelor's Degree
- ☐ Graduate Degree
- ☐ Post Graduate Degree

31. Should you want to leave any other feedback about the survey, about dog ownership or provide your thoughts on the role of regulation in dog breeding in Australia please feel free to do so here.

You have now completed the survey and I thank you very much.

Should you wish to know anything more about the study that I am undertaking please do not hesitate to contact me.

Should you know of anyone else that owns a dog that might be willing to undertake this survey please pass on my email address.

The way that the survey has been set up only allows the survey to be undertaken once on each computer. It is now safe to close down the Survey Monkey link.

Simone Bingham

Simone.Bingham@utas.edu.au

June 2015



## Dog Breeder Survey – Data Set 5

### Australian Dog Breeders Survey

#### Introduction

##### *Invitation*

You are invited to undertake a survey which will ask you to provide answers to a number of questions primarily focusing around your breeding practices and objectives as an Australian dog breeder.

##### *What is the purpose of this study?*

The Chief Investigator is Dr Sonia Shimeld. The breeder survey is being conducted by Sonia, Professor Paul McGreevy, Professor Dianne Nicol and Simone Bingham.

An extensive literature review, case law analysis and consumer survey have identified that there are concerns around how some dogs are bred and how some dogs are sold in Australia. The consumer survey has confirmed that Australian dog owners hold strong views around how and who should be breeding dogs in Australia. To expand on the data obtained in the consumer survey and to give Australian dog breeders a voice, this breeder survey seeks to gain knowledge of the breeding objectives and motives of Australian dog breeders. It also seeks to collect data on the selling practices of dog breeders, breeders' understanding of the companion dog market and their view on the current regulation of breeding.

##### *Why have I been invited to participate?*

There are many stakeholders in dog breeding in Australia. One of the largest is dog breeders. You have been chosen as a dog breeder. Your involvement in the study is voluntary and there are no consequences if you decide not to participate.

##### *What will I be asked to do?*

You are being asked to answer up to 40 questions provided to you as an online survey through Survey Monkey. The responses you provide are confidential unless you choose to provide an email address for a follow up survey that will be conducted by the research team in 2016.

##### *Are there any possible benefits from participation in this study?*

This research aims to provide guidance on how the current regulatory framework is able to address the issues in dog breeding and how it might be changed to better address the issues.

##### *Are there any possible risks from participation in this study?*

There are no foreseeable risks of your participation in this research.

##### *What if I change my mind during or after the study?*

It is stressed that participation in this research is entirely voluntary. You may decline to answer any survey question, withdraw at any time without effect or explanation and should you so wish, also withdraw any data you supplied to date where it is identifiable, prior to submitting the survey.

##### *What will happen to the information when this study is over?*

The data from the electronic surveys will be kept secured in a password protected computer file in Simone Bingham's office at the University of Tasmania for a period of 5 years after publication after which time the data will be deleted.

*What if I have questions about this study?*

Should you have any questions about your participation in this study please contact either Simone Bingham (Room 325 Centenary Building, Phone 6226 2314, email [Simone.Bingham@utas.edu.au](mailto:Simone.Bingham@utas.edu.au)), Sonia Shimeld Room (Room 309 Centenary Building, Phone 6226 7586, email [Sonia.Shimeld@utas.edu.au](mailto:Sonia.Shimeld@utas.edu.au)) or Paul McGreevy (B19 – RMC Gunn Building) University of Sydney, Phone (02) 9351 3957, email [paul.mcgreevy@sydney.edu.au](mailto:paul.mcgreevy@sydney.edu.au)

This study has been approved by the Tasmanian Social Sciences Human Research Ethics Committee. If you have concerns or complaints about the conduct of this study, please contact the Executive Officer of the HREC (Tasmania) Network on (03) 6226 7479 or email [human.ethics@utas.edu.au](mailto:human.ethics@utas.edu.au). The Executive Officer is the person nominated to receive complaints from research participants. Please quote ethics reference number H0013192.

### Objectives and Motivations for Breeding

1. Please rank the following statements in order of importance to indicate which **best** describes what motivated you to breed your **first litter** of puppies. (Please rank from 1 to 7, with 1 being the one that best describes what motivated you and 7 being the least relevant motivation.)
  - ☐ My love of dogs in general
  - ☐ My love of a specific breed of dog
  - ☐ My love of a particular dog I wanted to breed from
  - ☐ My love of competing in dog events
  - ☐ Another breeder encouraged me to breed my first litter
  - ☐ My family have been involved in dog breeding so I continued the tradition
  - ☐ I believed breeding would provide some financial benefit
2. How important are the following aims when you breed a litter  
  
Essential   Very important   somewhat important   Not important
  - ☐ To breed to the Australian National Kennel Council Ltd (ANKC) Breed Standard
  - ☐ To breed fit and healthy companion animals
  - ☐ For the betterment of the breed in Australia
  - ☐ To breed dogs that are fit for their original purpose (i.e., working or service dogs)
  - ☐ To breed dogs that can win in dog events
  - ☐ To make financial gain as a source of income
3. What breeds/types have you bred during your time as a dog breeder in Australia? (Tick all the breeds/types you have bred)
4. If you were asked to rank the importance of the following attributes of stud dogs when you breed, what rank would you assign them? (Rank from 1 to 7 by clicking the most important one and so on.)
  - ☐ Conformation
  - ☐ Health
  - ☐ General temperament
  - ☐ Temperament for showing
  - ☐ Temperament as a companion
  - ☐ Longevity
  - ☐ Colour and Markings

5. If you were asked to rank the importance of the following attributes of bitches when you breed, what rank would you assign them? (Rank from 1 to 8 by dragging the most important to the top and clicking one and so on.)
- ☐ Conformation
  - ☐ Health
  - ☐ Temperament as a mother
  - ☐ Temperament for showing
  - ☐ Temperament as a companion
  - ☐ Ease of whelping
  - ☐ Longevity
  - ☐ Colour and Markings
6. When you breed, how often do you retain a **female** pick of the litter?
- Always                  Often                  Sometimes                  Seldom                  Never
7. When you breed, how often do you retain a **male** pick of the litter?
- Always                  Often                  Sometimes                  Seldom                  Never

#### Questions about Puppy Buyers

8. How do you believe purchasers of a companion puppy **rank** the importance of the following **behavioural** attributes in their **preferred breed**? (Rank from 1 to 7 by clicking the most important and inserting one and so on)
- ☐ Obedient
  - ☐ Friendly
  - ☐ Affectionate
  - ☐ Healthy
  - ☐ Loyal
  - ☐ Good with children
  - ☐ Good with other animals
9. How do you believe purchasers of a companion puppy rank the importance of the following **physical** attributes of **pups** you present for sale? (Rank from 1 to 4 by dragging the most important to the top and clicking one and so on)
- ☐ Sex
  - ☐ Colour and Markings
  - ☐ Conformation
  - ☐ Health
10. How do you believe purchasers of a companion puppy rank the importance of the following **behavioural** attributes of **pups** you present for sale? (Rank from 1 to 4 by dragging the most important to the top and clicking one and so on)
- ☐ Boldness
  - ☐ Calmness
  - ☐ Playfulness
  - ☐ Friendliness

11. Approximately what percentage of prospective puppy purchasers want the pick of the litter?

100 – 75%                  74 – 50%                  49 – 25%                  24 – 1%

12. Approximately what percentage of prospective puppy purchasers are prepared to take the last pup of the litter?

100 – 75%                  74 – 50%                  49 – 25%                  24 – 1%

13. Approximately what percentage of prospective puppy purchasers want the boldest pup in the litter?

100 – 75%                  74 – 50%                  49 – 25%                  24 – 1%

#### Questions about Selling Puppies – general

14. How did you advertise your last litter? (Tick as many as apply)

- Breed Club Newsletter and other Club resources
- Canine Association breeder directories
- DogzOnline.com.au
- Gumtree.com.au
- Printed newspaper
- Social Media
- Through a commercial wholesaler or pet shop approved by the Pet Industry Association
- Other online breeder listing pages
- Own web page
- Word of Mouth
- Other (please specify)

15. For your last litter, did you pay any of the following (Tick as many as apply)

- Stud fee
- Lease fee for the bitch
- Transport cost for the bitch for the mating
- Transport cost for dog for the mating
- Veterinarian fees for the mating or pregnancy (such as for an ultrasound)
- Veterinarian fees associated with the birth
- Micro-chipping fees for the puppies
- Vaccination fees for the puppies
- Worming product for the puppies
- Registration fees for the litter and for each puppy
- Expenses to create a “puppy pack” for each new owner
- Transport costs for puppies (not otherwise paid by the puppy buyer)
- Other (please specify or provide more details of any other expenses you incurred for your last litter)

16. What do you currently provide when you sell your puppies?

- ☐ Yes
- ☐ No

#### Questions about Selling Puppies – key terms

17. What are some of the key terms/items you include (tick as many as you include)

- ☐ Conformation of price
- ☐ Confirmation of puppy's pedigree and registration details
- ☐ Confirmation of health testing
- ☐ Confirmation of vaccination
- ☐ Microchip details
- ☐ Return-puppy clause should the buyer be unable to keep the puppy
- ☐ Details on how the puppy has been raised
- ☐ Information around the puppy's behavioural and / or physical attributes
- ☐ Guarantees around the puppy's health

18. Would you support the introduction of mandatory puppy contracts? These could include such things as - the information you provide to potential puppy buyers upon which they make their buying decisions, confirmation of the health tests that you undertake, information around how the puppy was raised and what vaccination he or she has had prior to leaving your premises. They could also contain a clause that encourages new owners to return the puppy should they not be able to keep it.

- ☐ Yes
- ☐ No

19. Which best confirms why you do not support the introduction of puppy contracts?

- ☐ Too costly
- ☐ Too time-intensive
- ☐ I believe the way I sell my puppies currently works well, so a puppy contract is not required
- ☐ A puppy contract would not be effective
- ☐ I do not believe a puppy buyer should have the protection of a puppy contract

None of these set out the reason I do not support the introduction of a puppy contract.

(If this is your answer, please provide details here of the reason)

20. Do you have a return policy should an owner not wish to keep a puppy or dog bred by you?

- ☐ Yes
- ☐ No

21. Which answer best confirms why you do not have a return policy?

- ☐ Once a puppy has left me I have no way of knowing how it has been cared for or treated
- ☐ There are a number of options available for puppy buyers who do not wish to retain a puppy, including advertising to find a new home
- ☐ I do not have the room or capacity to have puppies coming back to me
- ☐ I do offer assistance and recommendations for where the buyer can find a new home, so do not need to take the puppy back

- It would be too expensive for me to have this policy in place for all puppies I breed
- Other (please specify)

22. What do you currently provide when you sell your puppies? (Tick as many as apply)

- Written receipt for funds paid
- Written or emailed information on the history of the breed
- Written or emailed information about health, lifestyle and dietary requirements
- Pedigree / Registration document
- Vaccination certificate
- Microchip certificate / change over document
- Deworming tablets
- Blanket
- Crate
- Toy
- Food
- Other (please specify)

23. We are interested in what you think is your role in the health of puppies you have sold. Please consider the following statements and provide your level of agreement or disagreement with them.

- I take responsibility for the short-term physical health (up to 3 years of age) of the dogs I have sold

Strongly agree   Agree   Neither agree nor disagree   Disagree   Strongly disagree

- I take responsibility for the long-term physical health (beyond 3 years of age) of the dogs I have sold

Strongly agree   Agree   Neither agree nor disagree   Disagree   Strongly disagree

- I take responsibility for the short-term mental health (up to 3 years of age) of the dogs I have sold

Strongly agree   Agree   Neither agree nor disagree   Disagree   Strongly disagree

- I take responsibility for the long-term mental health (beyond 3 years of age) of the dogs I have sold

Strongly agree   Agree   Neither agree nor disagree   Disagree   Strongly disagree

24. What health testing do you undertake in prospective breeding stock? (Tick as many as apply)

- Elbow and hip dysplasia
- Progressive Retinal Atrophy
- Collie Eye Anomaly
- Cataracts
- Legge Perthe's disease
- None
- Other (please specify)

## The Economics of Breeding

25. In 2014, how many litters did you breed? [Dropdown number to tick]
26. In 2014 what was the total number of live puppies born in all the litters you had? [Dropdown number to tick], 1 – 100 and More than 100
27. Considering the litter with the **largest number of live puppies** that you bred in 2014:
- What breed was this litter?
  - How many puppies were born in this litter?
  - How many live puppies were in the litter?
  - How many puppies did you sell?
  - How many of the puppies that you sold went to companion homes?
  - How many were sold to dog-event homes?
  - How many were sold as working or service dogs?
  - What price did you sell these puppies for?
  - Did any of these puppies come back to you for any reason?
  - How many pups from this litter do you retain today?
- If you would like to provide more details, please do so here.
28. When you breed, do you keep accurate records of expenses incurred?
- Yes
  - No
  -
29. If yes, would you be prepared to be involved in a further study we are conducting in an attempt to quantify the economic benefits and costs associated with breeding?
- Yes
  - No
30. If you are prepared to be involved in a further research project, please cut and paste the following link into a new URL and you can leave your contact details there.

<https://www.surveymonkey.com/r/economicsofbreeding>

## Economics of Breeding - Practices

31. How many bitches that you have bred from in the past 5 years still reside with you?
- All of them
  - Most of them
  - Approximately half of them
  - Fewer than half
  - None
  - Other (please specify)
32. How many brood bitches under 6 years of age do you currently own?
33. How often do you believe a bitch of the breed that had your largest litter in 2014 should be bred from over her lifetime?

34. Have you ever declared any money earned by you from breeding and selling puppies as income at the Australian Taxation Office?
- ☐ Yes
  - ☐ No
  - ☐ If you would like to expand, please do so
35. Is your breeding recognised as a business by the Australian Taxation office?
- ☐ Yes
  - ☐ No
36. Which of the following best describes your breeding?
- ☐ A hobby
  - ☐ A small business
  - ☐ A commercial breeding enterprise
  - ☐ Other (please specify)

#### **Regulation of Dog Breeding**

37. Are you aware of your rights and obligations as a dog breeder?
- ☐ Fully aware
  - ☐ Somewhat aware
  - ☐ Not very aware
  - ☐ Not at all aware
  - ☐ Other (please specify)
38. Do you believe the current regulation of dog breeding in Australia is effective?
- ☐ Yes
  - ☐ No
  - ☐ If you would like to expand on your answer, please do so here

#### **Membership of a Breeding Association / industry Organisation and Demographics**

39. Are you currently a financial member of any of the State or Territory Canine Associations?
- ☐ Yes
  - ☐ No
  - ☐
40. If you answered Yes, which ones (Please tick as many as apply)
- ☐ Dogs ACT
  - ☐ Dogs West
  - ☐ Dogs Queensland
  - ☐ Dogs NT
  - ☐ Dogs NSW
  - ☐ Dogs SA
  - ☐ Dogs Tasmania
  - ☐ Dogs Victoria
41. Approximately how long have you been a member? [Dropdown list years <1 to 50>]
42. Your age
- ☐ 17 or younger
  - ☐ 18-20



- 21-29
- 30-39
- 40-49
- 50-59
- 60 or older

43. State




Thank you very much for completing this survey.

Submission of a completed survey form implies consent to participate in this study.

Should you wish to receive more information about the survey please email Simone on

[Simone.Bingham@utas.edu.au](mailto:Simone.Bingham@utas.edu.au)

Appendix 5 – Copy of Post Cards promoting the Dog Owner Survey

	<h2 style="color: green;">Dog Owner Survey</h2> <p>Simone.Bingham@utas.edu.au</p> <p>Ethics Ref No: H0013192</p> <div style="background-color: green; color: white; padding: 5px; text-align: center;"> <p>Survey Link  <a href="https://www.surveymonkey.com/s/37W5KLV">https://www.surveymonkey.com/s/37W5KLV</a> </p> </div>	 <h2 style="color: yellow;">Survey of Dog Owners</h2> <p>I am looking for dog owners to answer 30 online questions about their dog, why they acquired him, their relationship with his breeder and knowledge about laws that regulate dog breeding in Australia</p> <p>Survey Link <a href="https://www.surveymonkey.com/s/37W5KLV">https://www.surveymonkey.com/s/37W5KLV</a></p>
<div style="background-color: #cccccc; padding: 5px; margin-bottom: 10px;"> <p>Online Survey of Australian Dog Owners              Simone Bingham, PHD Student, University of Tasmania</p> </div> <p>I am looking for dog owners to answer 30 online questions about their dog, why they acquired her, their relationship with her breeder and knowledge about laws that regulate dog breeding in Australia</p> <div style="display: flex; justify-content: space-between;"> <div> <p>Survey Link <a href="https://www.surveymonkey.com/s/37W5KLV">https://www.surveymonkey.com/s/37W5KLV</a></p> <p>Ethics Ref No: H0013192</p> </div> <div> <p>If you prefer, email Simone and she will send the link &amp; simple instructions</p> <p><a href="mailto:Simone.Bingham@utas.edu.au">Simone.Bingham@utas.edu.au</a></p> </div> </div>		<p>Simone Bingham, PHD Student Faculty of Law, University of Tasmania</p> <p>Survey Link <a href="https://www.surveymonkey.com/s/37W5KLV">https://www.surveymonkey.com/s/37W5KLV</a></p> <p>If you are unsure how to load the link on your computer, send Simone an email and she will forward the link and simple instructions that will open it for you.</p> <p style="color: purple; font-family: cursive;"><i>Simone.Bingham@utas.edu.au</i></p> <div style="display: flex; justify-content: space-between; align-items: center;">  <p>Ethics Ref No: H0013192</p> </div>

## Appendix 6 - Questions 13, 14 & 15 in Dog Owner Survey

*Table 47 - Questions in the Dog Owner Survey Relevant to Research Component 1*

Survey Q No.	The Questions	Research Question 1
13	Has your dog had any medical or other health or temperament conditions over its time with you other than standard vaccination and check-up visits to your Veterinarian?	A. What do dog owners believe are the major issues facing dog breeding?
14	Are you aware of what caused the latest of the medical issues experienced by your dog?	
15	Do you believe that any of the health or medical issues your dog has suffered may be a result of his or her breeding, or be specific to dogs of his or her type?	

*Table 48 - Dog Owner Survey Question 13*

<i>Has your dog had any medical or other health or temperament conditions over its time with you other than standard vaccination and check-up visits to your Vet?</i>		
Medical Conditions	No of Responses	%
Yes	1259	44.33%
No	1524	53.66%
No Response	57	2.01%
Total Sample	2841	100.00%

Table 49 - Dog Owner Survey Question 14

<i>If had a medical condition (Yes to q13) - Q14 Are you Aware of what caused the latest of the medical issues experienced by your dog?</i>		
Aware of what caused medical conditions	No of Responses	%
Yes	896	71.17%
No	331	26.29%
No Response	32	2.54%
Total Sample	1259	100.00%

Table 50 - Dog Owner Survey Question 15

<i>If had a medical condition (Yes to q13) - Q15 Do you believe that any of the health issues your dog has suffered may be due to his or her breeding or breed specific</i>		
Health Issue due to Breeding/ Breed Specific	Number of responses	%
Yes	454	36.06%
No	778	61.80%
No Response	27	2.14%
Total Respondents who said yes to Question 13	1259	100.00%

## Appendix 7 – Summary of Comments made in response to Question 15 in Dog Owner Survey

Table 51 - Dog Owner Survey - Summary of Sample Comments Made in Question 15

Key word	Breed / Type	Sample comments across breeds disclosed according to question 16
Genetics		
41	Basenji	<i>Potential genetic issue. Other pups exhibit symptoms worse.</i>
	Bernese Mountain	<i>He was the product of in line breeding, vet believes his anxiety issues are mainly genetic</i>
	Boxer	<i>Idiopathic head tremor / Genetic anomaly / Boxers. Prone to this condition</i>
	Cocker Spaniel Breeder	<i>Hip dysplasia. Genetic issues. Backyard breeder posing as registered pedigree breeder</i>
	Miniature Dachshund	<i>We effectively got our dog from a 'backyard' breeder who passed on genetic deformities</i>
	Standard Longhair Dachshund	<i>It's a genetic issue in the breed Suffered an episode of IVDD, was paralysed in the back end when a disk ruptured but with conservative treatment, complete crate rest is recovering but is no good for breeding which was the purpose of leasing the bitch. It's a known issue with dachshunds and some breeders are x-raying spines in young breeding stock to try to prevent the issue happening.</i>
	Dalmatian	<i>My boy is a stone former. Had an urethrostomy at 3 1/2 years of age. Since then no problems As I have had many Dalmatians I KNOW about diet. In his case I believe it must have been genetic. Dalmatians are well known to be prone to stones. I am so careful with diet that I am certain in his case it is genetic</i>
	Golden Retriever	<i>Possible obstructions and actual obstructions as mentioned earlier, cut paws, antibiotic resistant bacterial infections, bloat, epilepsy - last year vet bills (through accidents) over \$10,500, this year it's just been the surgery at \$7,500 Our older boy has epilepsy - I also know the owner of his sister and she also has it. It is genetic, we spoke to the breeder straight away when he was diagnosed, and she ensured the dogs were neutered (those sold are limited register, so you cannot breed them, she had kept two females for breeding.</i>
	Great Dane	<i>Yes, pannus is thought to be genetic. we gave given blood samples for a study into this</i>

	Italian Greyhound	<i>Luxating patella requiring surgery at 9 months (grade 3), allergies requiring grain free food. Breeding - luxating patella's are genetic.</i>
	Maltese	<i>When I purchased this dog, I had another dog of a different breed. This dog died recently of old age (18 years old) she was from a registered breeder and was always very healthy and her parents had been screened for genetic problems. So, I would look to a registered breeder if looking to buy another dog. Dog has had surgery on leg and hip when very young due to genetic deformities. Dog has also had CT scan at local Hospital (organised by VET but at facility for human patients) she has seen a visiting eye specialist from Melbourne. She is blind and has fluid on her brain and takes medication every day. The blindness and brain fluid accumulation are due to genetic factors with many puppies who suffer from this dying in their first year of life. Genetic Factors As described before - dog is Maltese and these issues are problems with the breed however the she was purchased from a back-yard breeder who was really only interested in making money. She was much smaller than the other puppies in the litter (which were all sold) and due to the living conditions, we couldn't leave her there. The breeder had not had the puppies vet checked, they had not been wormed or vaccinated and our puppy had a terrible flea infestation. The breeder said if she had vet checks and vaccinations she would need to charge more for the puppies.</i>
	Pug	<i>One (female) unexplained bleeding from the mouth - deemed not serious. 2 (male) Pyloric stenosis - prone to vomiting therefore is fed regular small meals. Both treated for minor ear infections in the past and gastroenteritis. They are pure breed pugs and I know it is more common for many pure breeds (as opposed to cross's and mongrels) to experience health issues due to genetic faults, inbreeding etc. Also, I was not surprised as my dogs do not have 'papers', therefore I have no knowledge of their pedigree history. Pugs are susceptible to ear infections due to their compact facial features. They're generally a fairly healthy breed if monitored in the heat, so I am not too concerned about their minor health issues.</i>
	Kelpie X Huskie	<i>Being part husky, he has a genetic predisposition to cruciate ligament problems and had surgery in March last year to repair his right back leg, almost exactly a year later he has developed the same issue with his left back leg and he is looking at having more surgery soon. Genetic thing with huskies. Well, yes... it's a husky thing.</i>
<b>Hereditary</b>		
10	Terrier cross	<i>Luxating Patellas are common for terrier breeds - while Fred is a mongrel obviously there are hereditary factors at work.</i>

	Border Collie	<i>Possible hereditary stomach issues which was started by &amp; aggravated by salmonella issue</i>
	Dachshund	<i>I assume conformation is hereditary so one of the parents probably had poor conformation of front feet</i>
<b>Breeding / Practice / Backyard</b>		
16	Cavalier King Charles spaniel	<i>Cavalier is suffering from bad breeding and lack of health screening.</i>
	Great Dane	<i>Vascular lumps removed x 2. Weak back end causing issue in later life - pain - neurological deficit in back legs Bad breeding</i>
	Great Dane	<i>Gastropexy, benign lump removed. Chiropractic care for roaches back This was the breeders first time to breed. I do not believe this breeder bred with integrity as she knew of health issues with both parents but still proceeded to breed. The information was not passed on to the people who purchased from the litter.</i>
	Norwegian Elkhound	<i>Liver shunt, genetic, present at birth. Bad breeding Breeding done without health testing of parents - BYB</i>
	Labrador Retriever	<i>Bad breeding meant lots of health issues and thousands in vet bills. Lucky he's cute! Labradors are prone to hip and elbow dysplasia. Bad conformation meant Java has snapped his cruciate multiple times in both legs, which has resulted in bad arthritis.</i>
	Chihuahua cross	<i>GORD and neglect/abuse as a puppy. The stomach issues are probably due to bad breeding as one of his litter mates had similar issues.</i>
	Maltese / Shitzu	<i>She has back issues regarding here vertebrae displacing and has been temporarily paralysed by some of these events. Vet has said this condition is the result of bad breeding practice's and is usually an inherited trait</i>
	American Staffordshire terrier cross	<i>He has Irritable bowel syndrome. Backyard breeders not doing health test</i>
	English Cocker Spaniel	<i>Hip dysplasia Genetic issues. Backyard breeder posing as registered pedigree breeder</i>

	Labrador	Malformed kidneys and ectopic uterus. Dog was bred by backyard breeder
	Pug	Two of my pugs are puppy farm dogs and the health issues relate directly to their neglect. They were not bred by registered breeders but back yard breeders and were probably interbred
<b>Health / Farm / Welfare</b>		
22	Cocker Spaniel	Has anxiety due to being puppy farmed and being locked in a pet shop cupboard as a pup, he needs to be a dog mistreatment as a pup and people not understanding him as a dog
	German Shorthaired Pointer	Anxiety when left alone. I believe German Shorthaired Pointers are prone to separation anxiety and she wasn't brought up appropriately with the breeder in her first 8 months before we got her.
	Miniature poodle	Separation anxiety (from the family) and an inability to read the body language of other dogs. She is also hyperactive but with training and behaviour modification is now settling reasonably well. When dog was experiencing separation stress, I contacted breeder who stated other dogs in his line had manifested same.
	Weimaraner	Health issues no but temperament plays a big part in her aggression. Her early experiences definitely played a huge part, but her nature / breed / temperament makes her reactivity more likely and being a female of this breed even more so. Had she been raised properly and supported like she needed by me she'd have been a very good dog but still they need lots of special care and training. Can be very needy dogs and highly strung



Appendix 8 – Comments made in response Question 21 in Dog Owner Survey that include the word ‘breed’ and one or more other key words

Table 52 - Dog Owner Survey – Comments that include both the key word ‘breed’ and one other

Comments Made in Responses to Question 21 that include the word ‘breed’ that also refer to other key words					
Accountability	7	Code		Consumer	4
Effectiveness	2	Enforcement	1	Genetic	35
Health	35	Monitor	17	Motivate	5
Protect	8	Regulation	25	Role	2
Stakeholder	0	Standard	25	Welfare	47
Advertising	1	Backyard	24	Council	11
Desex	11	Factory	1	Fad	0
Information	1	Intensive	1	Hereditary	5
Licence/Licensing	38	Locate	0	Practice	8
Political	0	Problem	16	Sell /Sale/ Sold	57
Transparent/Transparency	2			Farm	72

## Appendix 9 – Summary of Issues Raised in answer to Question 38 in Dog Breeder Survey

Table 53 - Dog Breeder Survey - Summary of Issues Found by analysing Question 38

Issue No. from Table 3	Key words	Issue	Sample quotes set out in the Comments made in response to question 38	Number of Comments
1	<b>Accountability and Transparency</b>	A belief that breeders need to be accountable for the dogs that they breed and that their breeding practices should be more transparent – through the use of a licensing system, more effective enforcement to assist in locating puppy farms	<p><i>Too many people breeding without testing stock. Backyard breeder get to breed with no accountability. Other registers for backyard breeders such as purebred are misleading to the general public.</i></p> <p><i>Make all breeders responsible for the animals they breed for the life of the dog. All ANKC registered pups are micro-chipped. Retain the Breeders details and make the Breeder accountable for any dog that ends up a stray. Use the laws that are currently in place and prosecute the backyarders who do not chip the puppies they breed. Would eliminate the need for Council Pounds. I know where EVERY pup is that I have bred since 1986. Doubt that any of the Oodle breeders can say the same.</i></p> <p><i>All dog breeders should be registered like ANKC ones are. There needs to be specific legislation for companion animal breeders making it mandatory for breeders to take back any dogs they breed for rehoming if they are unwanted at any time. Breeders need to be legally accountable for all totally preventable health problems, no matter the age of the dog and legally NOT responsible for those problems they cannot avoid with health testing of the parents. The current regulation that no dog be sold in a state of ill health just needs to be enforced.</i></p>	7

2	<b>Political</b>	A belief that animal welfare as an agenda is often politically motivated	<p><i>Need to actually stop the politics and look at the dogs. I.e. - no compulsory de-sexing of young dogs, licencing for owners, no sales in pet shops. Strict health and temperament testing for any breeding animals. I could go on for days on this stuff :)</i></p> <p><i>Non-government organisations such as the RSPCA are not objective and they run their own political agendas, they should never be involved in compliance. Enforcement of legislation should be an adequately funded government activity with normal standards of appeal and natural justice</i></p>	2
3	<b>Breeding Practice</b>	A belief that a proportion of breeders breed irresponsibly without regard to health of breeding stock or puppies, motivated by money not in the best interests of dogs or the breed and that no effective action is being taken by regulators to stop such practices	<p><i>Far too many people motivated to breed dogs in unregulated circumstances for profit and not for the betterment of the breed. I believe every person who breeds a dog or cat in this country should be responsible and traceable for the life of the dog to relieve the pressure of rescue groups and prevent so many unwanted dogs being bred each day around the country. Every person who breeds a dog should have to register all details and follow rules for best practice in the care and wellbeing of the animals being bred and the pups born. The breeding of pedigree dogs should be actively encouraged and have the opportunity for mentorship and Backyard breeding and puppy farming should be discouraged and made a very expensive exercise to prevent so many unwanted, unhealthy unsound dogs.</i></p> <p><i>I know of several puppy farmers and backyard breeders who will breed their bitch without concern for her health. Similarly, these people will sell 'purebred' pups but cannot provide a certificate of pedigree. There is nothing in place to stop these people in my opinion</i></p> <p><i>Until the puppy farms and backyard breeders (e.g. those breeding only in the hope of making money) are totally stopped there will continue to be problems with the sheer quantities of puppies... many of whom will die young from disregard to health in the pups or be abandoned at shelters. We also believe that mandatory veterinarian certification for the health and condition of the dam should be compulsory together with an enforced maximum number of litters ANY bitch can have. This could be enforced by the veterinary certification</i></p>	27

5	<b>Fad</b>	Breeders breeding because the public want a look or a type, not for temperament and soundness	<i>I believe that many breeds are suffering from popularity i.e. 'rare colours' in French Bulldogs, Amstaff etc. I also believe that there should be more control from ANKC as far as recording of health results on Certified pedigrees. I believe that dogs should be fit for purpose and that some form of temperament / character assessment should also be the responsibility of ANKC. I also believe that working tests should play a large part in assessing breeding stock. I would like to see ANKC follow the practices of some of the Scandinavian countries in health / working / temperament assessment. Too many dogs are bred just because they can be and often times 'registered breeders' will over breed some dogs / bitches just because they are in their backyard and they have their health clearances. Some of these do not even slightly resemble the breed they are supposed to be.</i>	5
6	<b>Genetic</b>	A belief that is supported in the literature, that many breeders do not do enough genetic testing and that they do not make careful enough breeding choices, and that this impacts on the health of puppies that are being sold.	<i>Some breeders registered with DOGS Vic breed for the wrong reasons - i.e. money for a holiday, for colours so they can get more money for the puppies. Breeders of cross bred dogs (designer breeds) do not generally test for genetic diseases in the breeding stock. (Non-I have queried). Not full disclosure that they are cross bred dogs and not 'pure breed' some advertise that they have papers - made up by owner.</i>	4
8	<b>Sell Sale Sold</b>	A belief that the ability to buy dogs over the internet or in a pet shop allows poor breeding and encourages lack of accountability	<i>While puppy mills and sale of puppies from public shopping facilities exist, we will never control the number of dogs being carelessly bred, or bred purely for money. Pet shops charge more for crossbred mongrels than I do for carefully bred, socialised and raised pups</i>	6

## Appendix 10 – Summary of How Issues May be Addressed According to Interview Participants

Table 54 - Summary of How Issues may be addressed according to Interview Participants

No	Issue Identified	No. who identified this issue	Quotes from Interview Participants
1	<b>Breeding registration and licensing</b>	7 W1 W3 W4 W6 I2 I4 I5	<p><i>A breeder permit system, which is licensing. Breeders to abide by nationally consistent mandatory and enforceable standards including a maximum number of litters per female dog over her lifetime, perhaps i.e. 6 litters and an age for an animal to cease breeding and you have said 6 years. Male dogs are not confined in breeding establishments their entire lives. Also, dogs retired from breeding would have their health and temperament assessed too as suitable for rehoming by independent vets and all animals for rehoming are to be de-sexed and an incentive system be identified and implemented to reward establishments where exercise, socialisation, handling and enrichment activities exceed the guidelines. (W1)</i></p> <p><i>A good robust licencing system and heavy penalties for people who are doing bad stuff, there need to be really heavy penalties, not just say a \$5000 fine but they should cease assets or fines in the thousands of dollars if they are in serious breach. Let me think heavy fines for serious breaches that needs to happen. (I4)</i></p> <p><i>We need the implementation ... of a licencing model where the fees retrieved from the licencing would actually run the enforcement of it and that is how they make it , not self-regulated but regulated, it will be run by a Government Department or someone like the RSPCA but it will definitely be self-funded and it can be funded enough so it can go on and the bigger the breeder you are the more audits you have to do , if you have five dogs maybe one audit every two years but if you have 200 dogs maybe every quarter you need to be audited so at the end of the day the fees need to be high enough so they cover it properly. (I5)</i></p>
2	<b>Banning of inappropriate breeding practices and creation of</b>	5 W3 W4	<p><i>It would just have to be a total government commitment to banning puppy farms, now I understand that you then need to look at restriction of trade arguments, but if you can just prevent them from operating. But if it is made an illegal activity I cannot understand why they just can't stop them. You have, ok Oscar's Law and they are doing a great job of getting the message out there and puppies out of pet shops but what about all the puppies that are shipped</i></p>

	<b>transparent breeding practices</b>	W5 W6 I5	<p>overseas, that is going to be the next big problem. As the pet shops are restricted the overseas trade is going to get bigger. How is that ever going to be stopped? (W1)</p> <p>I think um, look it comes back to transparency that is the big issue at the moment. People advertising their dogs online, meeting in a car park somewhere that is all bad. And there is a lot of money involved as cross bred dogs are actually selling more than pure breed dogs, more demand for cross breed dogs than pure breed dogs so unfortunately it does bring out the rogue factor. (I5)</p>
3	<b>More effective enforcement of current regulation</b>		I think regulation needs to be reviewed regularly because things do change, and we know more as we go along. But currently it is satisfactory as it is but it's more about the enforcement.
4	<b>Lobbying</b>	4 W1 W6 I1 I5	<p>... we have a strong emphasis on lobbying and we have a strong emphasis on projects and activities that will protect the animal human bond so I mean that that is really up there but what that really means is you know legislation and policies that keep people with pets, policies that are more likely to give animals a permanent home, that kind of thing. So when it comes to breeding, if a dog is, if there is over breeding going on, then there are dogs with health issues or even mental health issues and that is a much harder relationship for the owner of that dog and people are much more likely to give up. So if this sort of breeder legislation was there, and with these enforceable standards ensuring that the breeding dogs are in great condition, and the puppies are in great condition there is less likely to be these challenging dogs with either their health or their behaviour so yep. ((W1)</p>
5	<b>Restrictions on advertising and pet shop sales</b>	4 W1 W2 W6 I5	<p>If there are advertising ok they want advertising dollars fair enough, but do they know, do they screen them, do they know that they are not this incredible factory farm sort of situation or whatever. (W1)</p> <p>'The other part of it would be that they could not advertise dogs online or in the newspaper, its I guess like builders, they would have to put down their breeder code. I guess there are ways of defrauding it, ways around it but basically what we were trying to do was get as many people as possible to be registered so they could be located, and their premises could be checked. (W6)</p> <p>'People advertising their dogs online, meeting in a car park somewhere that is all bad. (I5)</p>
6	<b>De-sexing programs initiatives</b>	4  W1 W3	<p>And like and also the other thing that I think that needs to be done is Governments in that I am a very big believer in and have been for years in that all our pets are de-sexed, straight away at 12 weeks before they go (I2).</p>

		W6 I2	<i>We believe every dog that goes to a rescue group should be de-sexed before rehoming and at, I suppose with the current situation it is impossible to police compulsory de-sexing, it actually puts the ability of owning a pet or having one as a family member out of reach of a lot of people. (W3)</i>
7	<b>Incentive schemes/ rating systems for good breeders</b>	3  W1 I2 I5	<p><i>... certainly, the incentives system there are precedents for that in Switzerland and probably other places where good animal welfare outcomes actually bring a commercial benefit to the farmer, or the producer, the breeder or whatever. (W1)</i></p> <p><i>Well anyone can be a registered breeder, so you get your two blue xxxx, you fill out a form, answer a few questions and you become a registered breeder, just like I am a registered breeder, but it does not differentiate between that person and me.</i></p> <p><i>SB – Exactly and how do you differentiate?</i></p> <p><i>Sadly, I think you have to put a tiered system in. (I2)</i></p>
8	<b>Enhancing consumer choice and education</b>	3  W2 W6 I5	<p><i>Yep the backyard breeders, and the lack of de-sexing and certain people thinking you know we can sell these puppies for \$1000 and make a bit of money on the side, you know I think that that is causing a lot of problems. I think the sale of puppies in pets shops will go, I think the consumer will shut that down I think the pet shop industry is struggling at the moment it is under intense scrutiny, lots of questioning, more and more we are seeing this trend of pets shops saying we are just not going to sell puppies, we are going to work with rescue...(W2)</i></p> <p><i>Yes so I think that industry will be shut down by the consumer, by the choices that consumers make you know they are going towards rescue and registered breeders, I think that the next big problem facing us is the online trade, you know where puppy farms can build these beautiful webpages with dogs running in the grass, you know family raised, raised with our children, you know, it's just not true. (W2)</i></p> <p><i>....and the bottom line would be that then we would need to have this mass education campaign that is anyone is getting a dog doesn't matter where they are getting it from even from us, anywhere not to get it unless that person is a licenced breeder.(W6)</i></p>
9	<b>National Code of Conduct/</b>	3  W1	<i>Yes I think for us we see that there are a lot of inconsistencies between states that inevitably leads to loop holes for people so one of our big pushes is to see some legislation that is uniform and consistent across all states and the</i>

	<b>Standards or Legislation</b>	I4 I5	<p><i>legislation that we would particularly like to see is the licensing of breeders and the licensing of sellers and that would depend on them meeting certain mandatory standards of care. (W1)</i></p> <p><i>.... if you live in Queanbeyan which is right next door to Canberra and then you go across the border and you have a whole different set of legislation when it comes to how you can keep you animals or how pet shops are treated. (I5)</i></p>
10	<b>Site inspections of breeder's premises</b>	3 W4 W6 I5	<p><i>You have got the inspections, you have got the traceability, you have got you know easy access for the consumers and easy access to tell who is not doing the right thing. (W4)</i></p> <p><i>... what we were trying to do was get as many people as possible to be registered so they could be located, and their premises could be checked. (W6)</i></p>
11	<b>Mandatory breed identification paperwork</b>	2  I1 I2	<p><i>Better use of experts in the identification of dog breeds and compulsory positive identification. (I1)</i></p> <p><i>I believe that the government needs to bring in a regulation that requires that you just can't say what breed of dog you have, but you have to provide papers that confirms that this is an Italian Greyhound, you can't just say it is one just because you want it to be, because then what happens, if it is not, even if it is an Italian Greyhound crossed with a Tibetan Spaniel, which one do you call it. It's a bitzer and then we would get a lot of our issues, it kills all the chooks, the ranger picks it up, scans it, sees that it is a bitzer, it's not a Border Collie or an Italian Greyhound just because someone said it was or wanted it to be then. In society some breeds are considered to be abhorrent breeds, so then all of a sudden the media will accurately report that it was a cross breed that did it and in society we need to sort that out cause if a dog in society bites someone it's always a Rottweiler, if it's got, you know if it's black and white and has long fur it always becomes a Border Collie, if it has cheek muscles it's always a Pit Bull, but it's probably not one of them so I think there are a few things we have to do.</i></p>
12	<b>Licensing of dog owners</b>	1 W5	<p><i>Look, ages ago when I went to a Barrister as we were having problems establishing legally and at the time I had my Malamute cross and my Wolfie cross and this Barrister that works for council said to me there should be licences and depending on the type of dog you get your responsibility should be higher. At the time I thought how silly, but actually I have come right around to that view. It is not that big dogs are more aggressive, but they can do more harm. But I mean these people with these little fluffies that run up to other dogs in their face, they should have to do courses too. A little old lady walking a dog that gets in someone's face is a danger. So this is responsible pet ownership, not this</i></p>



			<p><i>voluntary code they have, which is what we have, is the only code we have to adhere to because we are running from private homes so we don't fall under another code. (W5)</i></p> <p><i>Look it comes back to transparency that is the big issue at the moment. People advertising their dogs online, meeting in a car park somewhere that is all bad. And there is a lot money involved as cross bred dogs are actually selling more than pure breed dogs, more demand for cross breed dogs than pure breed dogs so unfortunately it does bring out the rogue factor. (I5)</i></p>
13	<b>Enhancing consumer law and awareness of it</b>	1 W6	<p><i>.... consumer law. It protects you against certain things doesn't it, it gives implied warranties....</i></p>

## Appendix 11 – Summary of Regulatory Issues Identified by Interview Participants

Table 55 - Summary of Regulatory Issues Identified by Interview Participants

No	Issue	Number of Comments	Comment
1	<b>Complexity of the Regulatory Framework</b> A belief that regulation. <ul style="list-style-type: none"> <li>- is inconsistent across States</li> <li>- applies to some breeders and not to others</li> <li>- attempts to ensure best practice should be based on scientific evidence from all dogs irrespective of how many are owned by a breeder</li> <li>- is not something that all breeders are aware</li> <li>- focuses on some aspects of breeding</li> </ul>	7 W1, I1, W3, I3, W4, I4 & W5	<p><i>'Non-existent or weak compulsory standards for breeding establishments and inconsistent regulations across the states.'</i> (W1)</p> <p><i>'Having said that, it's unfair in so much as non-members of the TCA can wreak havoc, they can do what they like there is no control seems to be no control over them, whatsoever. And having said that we also have people under our umbrella who get away with it so we rely on the honesty of the people making application for litters etc. and we do we have to rely on that.'</i> (I4)</p> <p><i>Yes well the code in Victoria is quite strict, very much influenced by Vic Dogs which is crazy stuff because if it's better for a dog, and this is my argument, if you are going to tell me that this is what is required in order to keep dogs healthy then it has to be all dogs, it can't just be dogs after you own 2 or 3 or if you belong to a particular organisation. If this is best practice, then it's got to be best practice, it can't change based on the number of dogs that you own. And I am not talking about how you house them I am talking about vaccinations, how you feed them I mean there is just mad stuff and it's not science based.'</i> (I3)</p> <p><i>And these regulations, for example the ones in Victoria where they are limiting whether or not people want to breed, the pressures that are on are actually discouraging people from breeding they are actually lowering gene pools. It's my opinion that a dog can stand around in a bit of dog poo and that might not smell very nice and doesn't look very nice but breeding a dog that can't breathe or can't walk up a hill or that dies at four years of age is much crueller than any of that factory puppy farming crap.'</i> (I5)</p>

	but not always the important ones		
2	<b>Dogs as Property</b>  A belief that the law treating dogs as property allows the poor treatment and for breeders to view them as products	I3	<i>But even the code, if they enforced it, it wouldn't guarantee that you are getting a healthy puppy. And even though it is better for business if you can say that our puppies are the healthiest in the world etc. The fact is that we are working with living things and we cannot guarantee that. I believe that when they guarantee that type of stuff its fraud. That it just sets up the whole process, you guarantee to somebody that a dog won't get hip dysplasia, when it does and they come back well the breeder will say you didn't feed it the right way or house it the right way, or come up with some environmental factor and they have a valid argument but why did they say in the first place that they were going to guarantee it because that is all the pet buyer hears when they couldn't guarantee it at all. So why are they guaranteeing it. (I3)</i>
3	<b>Is not Property Resourced or Funded</b>	I5	<i>Well I think that they are two very things. Breeding there definitely has to be good strong regulation around breeding, the issue with that is that at least in NSW, Queensland and Victoria there is already good regulation in place the issue is that there is not enough funding, or not enough resources available to hold breeders accountable to the regulation so and there are lots of breeders out there that don't even know regulation exists as they might have been a breeder for, they might be the owners of a couple of dogs that they decide to breed and the next thing they know they have 20 dogs and they love what they do and they are unaware of the legislation as no one has ever told them and they are up in the country they are retired and they use to breed cattle and they don't do that anymore and now they are breeding dogs and no one has told them they are accountable so they have just gone ahead and done it. But you know I think if there were more resources available and if breeders were licenced then it would definitely be a much better industry, it would be a much cleaner industry then it is now. The stuff you see on television is because breeders are allowed to do what they like and they don't have to tell anyone about it.(I5)</i>
4	<b>Enforcement and/or monitoring of breeders</b>	3  W1 W3 W4	<i>'Canine associations lack of enforcement of their own code of ethics, the industry cannot be trusted to regulate itself because it does not have sufficient commercial independence to ensure adequate welfare standards are maintained. We can provide details from reliable sources of disgusting practices carried out by breeders of pure breed dogs. (W1)</i>

		I5	<i>It is viable, the biggest issue is the policing of it, that is the stumbling block, I mean they have micro-chipping laws but you go onto any Facebook group there 60 cats, no microchip, 150 dogs, no microchip, you go to the DPI and they say it is the council's responsibility, you go to the Council and they say oh we haven't been given DPI responsibility to do that, neither party will follow it up, so it's a dumb law in that no one can speak that law and police it.'</i> (W3)
5	<b>Ineffective Codes and Standards</b>	1 W1	<i>Non-existent or weak compulsory standards for breeding establishments.</i> (W1)
6	<b>Licensing of Breeders and/or permit system</b>  A belief that there is a need to licence all breeders	5 W1 W3 W4 W6 I5	<i>A good robust licencing system and heavy penalties for people who are doing bad stuff, there need to be really heavy penalties, not just say a \$5000 fine but they should cease assets or fines in the one thousand of dollars if they are in serious breach. Let me think heavy fines for serious breaches, that needs to happen and perhaps a rating system, that has been talked a fair bit a rating system on your facility. It is to encourage breeders to want to become a five-star facility as opposed to a three star facility so you know it's a good way of holding breeders to be accountable, self-regulating getting them to aspire to wanting to actually be the best that they can be.</i> (I5)  <i>No look it's not ok, it's failing dogs, and it's failing consumers and in failing breeders who are doing the right thing as everyone is getting thrown into the same basket. And a really a lot of the answers to your questions are going to be that we advocate for the breeder permit system and I don't know whether you looked at that on the website or not but for a lot of the questions you are going to ask I think that a breeder permit system would help a lot in that area.</i> (W4)
7	<b>Breed Specific Legislation</b> A belief that this is not fair, that blame the deed not the breed should be adopted	2 I1 I2	<i>Government and Local Council inconsistencies with legislation and misinformation by the media when reporting particularly incidents of dog aggression. Breed Specific Legislation for example.</i> (I1)

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## Appendix 13 – Sample Comments made in Response to Question 21 in Dog Owner Survey

Table 56 - Sample Key Comments made in response to Question 21

An examination of the key comments made in response to Question 21	
In Support	<i>Commercial dog breeding means there is an opportunity for open and accountable dog breeding and associated facilities and management. Whether that opportunity is then appropriately regulated taken up is another matter. Current entrenched attitudes within the purebred dog breeding community does provide much confidence of success though but must start somewhere.</i>
	<i>This is a qualified yes. If the industry is well-regulated and strictly monitored and the animals well cared for, I don't see the harm in having experts breed companion dogs. Thousands of Australians have dogs, and many of them come from breeders. I am, however, aware that puppy farms can be cruel, ugly and exploitative, and I'm not sure how you stop the assholes from being assholes.</i>
	<i>Compelling reasons are required for curtailment of freedoms. I see no such reasons for proscribing, rather than regulating, commercial dog breeding.</i>
	<i>Yes, but it depends what you mean by 'commercial'. I have no problem with breeders keeping small numbers of dogs (maybe up to four or five breeding females and one or two males) if they are looked after really well with all their needs for socialisation, love, companionship, exercise, shelter, stimulating activity, positive behavioural training etc. properly met. I have a BIG problem with puppy farms or commercial breeding operations with large numbers of dogs, even if cared for in ways that are legally acceptable, because I don't believe such operations can really meet the needs of individual dogs.</i>
	<i>Technically speaking, any dog breeding is commercial (including those 'but I only want one litter before I de-sex her' backyard breeders). I do believe in breeding dogs responsibly (including some crossbreds, e.g. farm dogs). I do believe in litter registration limits per breeder and a limit of three litters per bitch</i>
	<i>Yes, but only on a small scale and done by knowledgeable people who breed less than 1 litter per year per bitch, do all genetic testing appropriate for breed, have homes pre-approved for litters, always take back unwanted dogs sold, socialise all puppies appropriately and breed for great temperament.</i>
	<i>There is enormous demand for dogs, particularly cross breeds. If commercial breeding is banned, it will just become an underground activity, to the detriment of bitches and puppies. It's unrealistic to expect people to buy only unwanted or shelter dogs</i>

<b>Yes and No</b>	<i>Yes and no. I think yes because many purebred dogs are amazing, and a lot of people like me really love a particular breed. I think no because puppy farms are vile and owning/breeding at that rate for commercial purpose is animal abuse. However, from talking to responsible breeders, they will tell you that doing it responsibly will not make you money. I think if breeding is tightly regulated and society in general neuters/spays dogs it is not a problem</i>
	<i>This was tough. The issue with commercial dog breeding is that it becomes all about the profit rather than the well-being of the dogs. However, without it, it would likely be much harder to share our lives with these glorious creatures. On balance (and perhaps a little selfishly) I say yes. Having said that I'd like it to be far more strictly controlled to ensure the dogs (both those used as breeding stock and those being sold) are as healthy as possible, rather than pumping out as many as possible to maximise profits,</i>
	<i>Dogs should not be treated like a financial commodity. If money is made from breeding them that is ok, so long as sufficient funds are directed in to the breeding and rearing so that all dogs involved are cared for to very high standards and appropriately socialised (as I am currently fostering a puppy farm puppy I am seeing first-hand the effects of breeding for money with no consideration of the dog).</i>
	<i>If you mean breeding and selling puppies to the public, yes. If you mean large-scale farming operations, no. Most pups go to homes where they are expected to be family members and they need to be raised that way (i.e. socialised with people) from day 1, from dog parents who also live as companions and not just breeding machines kept in kennels. This is best done in small home breeding situations.</i>
	<i>If by commercial you mean ethical, registered breeders then yes as they continue to supply healthy, high quality dogs that are bred responsibly. Otherwise, no.</i>
<b>Against</b>	<i>No dogs cats all pets in fact are living beings and therefore deserve to be treated with respect and not bred indiscriminately for money - if/when you buy a pet it should become a part of your family and loved accordingly. Commercial breeding should be outlawed in my opinion!! The sooner the better - the way the animals are treated is disgusting!</i>
	<i>There just isn't a need for it. There are far more dogs looking for homes than there are homes available, and for people who want a particular breed of dog, a small, knowledgeable breeder will do a far better job in providing them with a good, sound dog. And of course, current commercial puppy farmers prove time after time that they have no interest at all in the welfare of the dogs they breed from or the dogs they breed. As well, current knowledge tells us that dogs are extremely sentient, have specific development periods when the correct socialisation is paramount, have emotions, and are capable of quite complex thought process - none of which should ever apply to an animal that is bred commercially.</i>
	<i>Absolutely not - commercial dog breeding is not required - especially given the enormous number of dog's euthanised daily in shelters. Commercially Bred dogs are mostly maladjusted due to poor stimulation and socialisation and tend to have poorer health outcomes.</i>

<p>Unsure of what the term 'commercial breeding' means</p>	<p><i>What does commercial mean? Is this indiscriminate breeding of dogs to produce puppies for sale with little thought to the health/genetics i.e. puppy farms? Indiscriminate breeding of dogs should not be allowed. There should be a nationally consistent QA type accreditation scheme for dog breeders that controls that management and care of dogs used for breeding including health checks/genetics and management at the property that encompasses puppies available from show homes and/or reputable breeders. The popular breeds are especially getting destroyed by dodgy breeders. I don't get this craze for 'oodles either, I have heard tales of crazy crosses such as beagles and poodles resulting in mad dogs or in coats that are a nightmare to maintain. If people wish to breed dogs it should be for the betterment of the breed and therefore they should understand the breed standard etc. - not just breeding puppies for people to buy. I would support the cost of such puppies being high as well as people should treat dog ownership as a privilege. Puppies should not be available for sale through pet shops unless through a recognized adoption agency such as the RSPCA as a way of increasing promotion of these animals. Incentives should be provided to encourage potential puppy buyers to buy their puppies from an accredited breeder similar to the registration fees for castrated dogs.</i></p> <p><i>Yes, but it depends what you mean by 'commercial'. I have no problem with breeders keeping small numbers of dogs (maybe up to four or five breeding females and one or two males) if they are looked after really well with all their needs for socialisation, love, companionship, exercise, shelter, stimulating activity, positive behavioural training etc. properly met. I have a BIG problem with puppy farms or commercial breeding operations with large numbers of dogs, even if cared for in ways that are legally acceptable, because I don't believe such operations can really meet the needs of individual dogs.</i></p>
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## Appendix 14 – Screen Capture of the NVivo Nodes Page with the 35 key words

**Nodes**

Look for:  Search In  Find

**Nodes**

- Nodes
- Relationships
- Node Matrices

**Nodes**

- Stakeholder Interviews
  - A Introductory Questions
  - B Issues Facing Dog Breeding In Australia
    - A What do you believe are the major issues facing dog breeding in Australia
      - Accountability
        - Transparency
      - Advertising
      - Backyard
        - Breeding
        - Intensive
        - Locate
      - Code
      - Consumer
      - Council
      - Desexing
      - Effectiveness
      - Enforcement
        - Monitoring
      - Fads
      - Farm
        - Factory
      - Genetic
        - Hereditary
      - Health
      - Information
      - Lack of Statistics
      - Licencing of Breeders
      - Motivate
      - Politics
      - Population
      - Practices
      - Profit Belief
      - Protect
      - Regulation
      - Role
      - Sale Sell Sold
      - Stakeholder
      - Standards
      - Welfare

**Sources**

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**Models**

## Appendix 15 – Question 25 in the Dog Breeder Survey

Q 25 – In 2014, how many litters did you breed? (Drop down list – went to 30 and then over 30)	Number of responses	%
0	75	27.27
1	79	28.73
2	41	14.91
3	16	5.82
4	7	2.55
5	6	2.18
6	3	1.09
8	2	0.73
13	1	0.36
19	1	0.36
20	1	0.36
25	1	0.36
Over 30	1	0.36
No response	41	14.91
Total Sample	275	100.00